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An historical/critical analysis of the evolution of Canada's pay television policy.

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AN HISTORICAL/CRITICAL ANALYSIS OF THE EVOLUTION
OF CANADA'S PAY TELEVISION POLICY

by

Robert Shawn Wilson

A thesis
presented to the University of Windsor
in fulfillment of the
thesis requirement for the degree of
Master of Arts
in
Communication Studies

Windsor, Ontario

1985



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ABSTRACT

The thesis is an analysis of the manner in which an important cultural issue was pursued by this country's policy-makers. Pay television was chosen as that issue because it represented a chance for the CRTC to exercise its regulatory authority to shape a new broadcasting service which could revitalize the Canadian film and broadcasting industry.

The thesis outlines the historical development of pay television in North America. Following that, the historical development of the pay TV policy process in Canada is summarized. As well, a paradigm of a policy process is offered so that it can be compared to Canada's pay TV policy process later in the thesis.

The succeeding chapters are primarily concerned with whether the CRTC's approach to setting a policy for pay TV in Canada was able to balance the cultural objectives of the Broadcasting Act with the economic and structural realities of pay TV. This issue is critically examined in relation to the CRTC's choice of a method of exhibition for pay TV; the choice of a competitive rather than a monopolistic market for pay TV; and the Canadian content regulations for the pay networks.

The thesis concludes that the major problem with Canada's pay TV policy was the lack of attention given by the CRTC to developing guidelines for the industry before the 1981 licensing hearings. Instead of formulating a policy for the licence applicants to live up to, the CRTC allowed the licensees' ideas to become the guidelines which it followed when developing a policy after the fact. Therefore, when the licensees' optimistic projections for pay TV did not come true, the CRTC was forced to make many changes in its policy to allow Canadian pay TV to survive.

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INTRODUCTION

This thesis is an historical/critical analysis of the regulatory process in regard to developing a policy for the adoption of pay television in Canada. It is an examination of the way an important cultural issue was pursued by this country's policy-makers. The reason pay TV was chosen as that issue was because it is a current, important issue in Canadian broadcasting which represents a chance to revitalize the Canadian film and broadcasting industry. As well, it is the first broadcasting service under the regulatory power of the Canadian Radio-Television and Telecommunications Commission (CRTC) to be introduced in Canada since the CRTC was created in 1968. Pay TV represented an opportunity for the CRTC to exercise its authority with a view to shaping a new broadcasting service that benefited Canadian culture.

The thesis examines the effectiveness and the suit-

ability of the Commission's decision-making process in encouraging the cultural opportunities that pay TV represented. As well, it examines the subsequent policy in relation to the objectives of the Broadcasting Act, (1967-68, c. 25, s. 1) and the CRTC's interpretation of the Act.

The Broadcasting Act, followed by the CRTC-Act, (1974-75, c. 49, s. 14) are the federal legislation from which the CRTC derives its regulatory authority. The Broadcasting Act gives the Commission the responsibility for regulating and supervising the Canadian broadcasting system with a view to implementing the objectives enunciated in section 3 of the Act.

However, before analyzing the Commission's approach to developing a policy for Canadian pay TV, it is first necessary to outline the events which preceded the policy-making process. Chapter I offers an historical overview of pay TV's development in North America, including the many experimental pay services which preceded pay TV's introduction to the mass market. Then, a second section of the chapter outlines a paradigm of a policy process to which Canada's pay TV policy process can be compared later in the thesis.

Chapter II includes discussion among Canadian government representatives, broadcasters and other interested

parties which contributed to the CRTC's formulation of a policy for Canadian pay TV. It is a chronological history of the manner in which an important cultural issue was pursued and decided upon by this country's policy-makers. The chapter covers the period from 1970 when pay TV in Canada first became a public issue, until the March 18, 1982 decision of the CRTC to award licences for the operation of pay TV networks.

These first two chapters are primarily a descriptive history which introduce the nature of pay TV and the CRTC's attempt to integrate this unique type of cultural entertainment into the Canadian broadcasting spectrum. Lyman (1983: 68) wrote that:

The CRTC's decision to license pay TV in 1982 was probably the most significant broadcasting policy decision in a decade. Nowhere are the policy issues occasioned by technological advances more dramatically evident than in the introduction of pay TV in Canadian broadcasting.

The ramifications of the CRTC's decision are explored in the next two chapters. The major area of concern in these chapters is whether the CRTC's approach to setting a policy for pay TV in Canada was able to balance the cultural objectives of the Broadcasting Act with the economic and structural realities of pay TV. The handling of Canadian broadcasting policy in the past by Canadian public of-

officials has lacked deliberate organization. (CBL, Aug. 1976: 8) This raises the question of whether pay TV has been mishandled the same way.

Chapter III is concerned with the methods of distribution and exhibition for pay TV chosen by the Commission, and their alternatives. The first matter of concern is the Commission's decision to license operations which have a pay-per-channel method of exhibition, rather than choosing a pay-per-program or a universal method. The pay-per-channel method features one or more channels which offer a designated schedule of programming. A person who subscribes to any such channel must pay a single charge each month to view the schedule of programming on that channel. Every subscriber has access to the same programs in the same time-slots, and must pay the pre-determined fee, no matter how much or how little he watches the channel.

The pay-per-program method may use a multitude of channels, each offering a different program with a particular charge to watch each one. If a subscriber is interested, he pays the charge to watch a program. If he is not interested, he does not have to pay for that program. The method of collecting payments and monitoring what a subscriber watches is chosen by the operator of the service.

A universal service is a single channel of diverse

programming included with the basic cable service. All cable subscribers receive the channel on their basic service (channels 2 through 13).

The CRTC's choice of a method of exhibition will be examined from the perspective of whether a pay-per-channel service offers a better combination of potential revenue generating possibilities in comparison to operating costs, as well as the ability to encourage the production of more Canadian programming than a pay-per-program or universal service.

Another issue examined in Chapter III from the same perspective is the CRTC's choice of a competitive market for pay TV in Canada. The Commission chose to license a national pay network to compete for subscribers with three regional networks and a channel featuring the lively arts. The appropriateness of a competitive scenario for the objectives of financial profitability and incentives to new Canadian productions is explored.

There are two less prominent issues dealing with exhibition and distribution also discussed in Chapter III. The first is the method chosen to deliver the pay signals to Canadians and whether the cable operators should be considered as distributors or exhibitors. The second is why preliminary market testing of temporary pay services was not

carried out before pay TV was introduced nationwide.

The issues examined in Chapter III are applicable to two different subsections of section 3 of the Broadcasting Act. Subsection (j) states "the regulation and supervision of the Canadian broadcasting system should be flexible and readily adaptable to scientific and technical advances." This phrase is relevant to the Commission's choice of a technically established method of exhibition like pay-per-channel rather than the less conventional methods of pay-per-program and universal. Also, if the Commission was going to be "flexible and readily adaptable" to the pay TV environment, would it not have been wise to license preliminary test services for pay TV?

The other subsection of importance is (d) which says:

the programming provided by the Canadian broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of a high standard, using predominantly Canadian creative and other resources.

The phrase "programming . . . should be varied and comprehensive" applies to both the choice of a competitive pay TV market and a pay-per-channel method of exhibition. Whether these choices of the Commission were based on the belief

that they would lead to more varied and comprehensive programming and, if so, whether this belief was well justified by available evidence, is considered in chapter III.

As well, the words "programming . . . should be of a high standard, using predominantly Canadian creative and other resources", are applicable to the concerns of chapter III, and more specifically to chapter IV. Chapter IV deals with the regulations established by the Commission to encourage the pay networks to aid in the production, distribution, and exhibition of Canadian made-for-pay programs and films. It also explores pay TV's potential to fulfill the Commission's Canadian content regulations and make the contribution to Canadian culture that the CRTC anticipated it would.

After the research questions are examined in Chapters III and IV, Chapter V ties together the different issues and offers an opinion on the comparative suitability of the Canadian pay TV policy process to the policy process paradigm outlined in Chapter I, and to the objectives of the Broadcasting Act. As well, a discussion of pay TV's chances of success in Canada, with consideration to the substantial changes in the industry since the 1982 Decision, concludes the thesis.

CHAPTER I

THE HISTORY OF PAY TV'S DEVELOPMENT

Before examining the policy process in Canada which led to the licensing of pay TV networks in 1982, this chapter outlines the history of pay television's development and traces its progress to the recent past.

Pay TV predates commercial television. The founder of the Zenith Radio Corporation, Eugene McDonald, conceived the idea of pay TV in 1929, when television was still in the experimental stage. McDonald started his engineers working on pay TV as early as 1931. (Howard, Carroll, 1980: 6) By 1937 another company, Scophony Ltd., was issued pay TV patents for a large screen system first demonstrated in Great Britain, and a year later in New York City. (CRTC, 1978: 7)

(9)

These demonstrations were not followed up on. It was not until 1950, after commercial television had already become established, that the first tests involving pay TV were carried out. This occurred after the U.S. Federal Communications Commission (FCC) authorized pay TV experiments in New York City, Chicago and Los Angeles. In New York, the Skiatron company used the "Subscriber-Vision" system where customers buy punch cards which, when inserted in the receiver, actuate the decoding apparatus. In L.A., the Telemeter system was used, involving a payment for each program as it was viewed by the subscriber. Payment was made by means of a coin box attached to the receiver which would actuate the decoding apparatus after the payment was made. A collector came by each subscriber's home every 30 to 60 days to collect the coins. In Chicago, Zenith used "Phonevision" which transmitted an over-the-air scrambled signal on experimental station W9XZV, to all television sets in the area. If a person had his set equipped for Phonevision and wanted the signal unscrambled for a certain program, he would contact the telephone operator and the key signal would then be sent along the telephone wire through a trap set up at the subscriber's home, which would delete the scrambled signal and allow the key signal to reach the subscriber's set. Then the signal became clear.

(Howard, 1980: 8)

These three experiments lasted for a few months each and were judged to be successful by their corporate sponsors. As a result of the successes, a number of television licensees urged the authorization of a regular pay TV service in the U.S. (Howard, 1980: 9)

THE BARTLESVILLE PAY STATION

A full-scale attempt at a profit-making pay TV venture was started in Bartlesville, Oklahoma beginning in September 1957. It was not an experiment authorized by the FCC because programming on the service was sent from a Bartlesville studio to subscribing homes via a coaxial cable which was attached to TV receiver antenna inputs. This method of transmission was outside of the FCC's jurisdiction at the time. (Arroyo, 1966: 97)

The project was a pay-per-channel approach offering first-run and re-run movies. The operation suffered heavy losses due to consumer disinterest and was discontinued after eight months. (Arroyo, 1966: 98) However, the Bartlesville project was significant because the wired system that was used represented an idea which became quite

feasible for pay TV in the 1970's. (Howard, 1980: 28)

THE ETOBICOKE EXPERIMENT

Another pay TV project using the wired system was also Canada's first experience with pay TV. It was an experiment in Etobicoke, Ontario started in 1960 by Telemeter, a wholly-owned subsidiary of Paramount Pictures Corporation. Choosing a Canadian community for the test was^a decision which Telemeter made after much thought. The U.S. was in the midst of a pay TV controversy at the time. During 1960, the U.S. Congress, American theatre owners and conventional television networks, and pay TV proponents were engaged in vigorous disputes. Telemeter felt it was unwise to attempt a pay TV experiment in such an explosive atmosphere. Canada in contrast, had hardly felt even a stir of protest over pay TV. (Arroyo, 1966: 72)

In addition, Telemeter felt Etobicoke was a "perfect microcosm of the North American continent." (Howard, 1980: 29) When the test was begun Etobicoke had some duplication of network programming, with one network from Toronto, three from Buffalo and one from Hamilton. Other advantages for conducting the tests in Etobicoke were its

location in a fast growing area, the population's wide range of income levels, and the fact that 90% of its residents owned a TV set. (Arroyo, 1966: 73)

The decoding system used in Etobicoke brought in three closed-circuit channels. The deposit of coins activated the system, converting the closed-circuit signals to the frequency of one of the unused channels on the VHF band. Movies and sports were the main fare on two of the three channels, while public service programming was offered on the third. (Howard, 1980: 29)

The project began with 800 subscribers, reaching a peak of 5,800 by August 1960. However, the subscription level fell off from there, ending up with 5,000 homes by the time the experiment was discontinued in 1965. (Arroyo, 1966: 73)

In order to acquire a clearer understanding of the viewers' reaction to pay TV, not indicated by simple subscription numbers, a study of the Etobicoke subscribers was conducted in the spring of 1962. It was designed to discover the tune-in and household habits of viewers. The study was sponsored by the CBC and was carried out by an independent research organization. The survey showed an average expenditure per family of 65¢ a week for programs. This did not include the 29¢ weekly service fee which all

subscribers had to pay... One of every five subscribers reported no money spent at all during the entire four week period of the study. This ratio coincided with the finding that one family out of five was dissatisfied with the service. The poor quality of films, "over-sexed" movies and the high cost of the service were the main reasons for their disenchantment. According to the survey, subscribers indicated a desire for better quality and more recently produced films, fewer repeats of the films shown, more specials and live shows, more sports telecasts, more musicals and Broadway-type entertainment, and better quality children's programming. (Arroyo, 1966: 77)

Instead, the programming the subscribers received was made up almost exclusively of feature films, with the exception of some Toronto Maple Leaf hockey games. In all, sports provided \$90,000 of Telemeter's total \$250,000 annual gross receipts. In the final months prior to discontinuing its operations, Telemeter was providing 40 hours of programming per week -- about half of it unduplicated. (Arroyo, 1966: 78)

On the whole, the Telemeter experiment uncovered various personal reactions to the pay system. For example, it was found that older people who retire early in the evening liked the idea of viewing a first-run movie without hav-

ing to stay up late. Also, the commercial success of the film "Psycho" on the pay service when shown two weeks after its local theatre run, and the financial returns from other major film presentations indicated to Telemeter "that there is a source of income to be obtained from a home audience . . . which for any number of reasons may not be lured into a theatre." (Arroyo, 1966: 78)

Despite what was learned from the Etobicoke experiment, the trade press described it as a failure. The lack of subscriber growth and the inability to make a profit were the reasons most often cited. But Telemeter felt these judgements had to be weighed against other factors. Financial losses were anticipated by the company because the project was only a test to discover the economic and technical problems involved. (Arroyo, 1966: 74) As well, it was difficult for the Etobicoke experiment to succeed because its pay TV system called for the installation of cable service for pay TV alone, rather than pay TV being an additional source of revenue to a cable service which was already paying its way by providing a basic service of distant signals. (Edmunds, 1976: 13)

Telemeter's President Howard Minsky offered an optimistic summary of the Etobicoke experiment when he called it,

. . . electronically, sociologically, program-wise,
. . . a screaming success. We now know we could
expand the pilot project to 25,000 subscribers and
come into the United States earning a profit.
(Arroyo, 1966: 79)

THE HARTFORD EXPERIMENT

While the Etobicoke experiment was in progress, the FCC announced that it was prepared to consider any pay TV applications by a commercial television station. These applications would be for experimental operations. The tests would be limited to three years, and only one trial subscription system would be allowed per market. As well, just one local TV station could be devoted to the service.
(Arroyo, 1966: 57)

The FCC considered trial-run pay systems necessary to:

- 1) Enable the public to register its own judgement on such a service;
- 2) Obtain information to help the Commission determine the competitive impact of pay service on the commercial television system;
- 3) Obtain operating information about any need to standardize technical equipment and methods; and

4) Determine, on the basis of experience, whether pay TV service requires additional regulatory controls. (Arroyo, 1966: 56)

The first test of pay TV, under the rules laid down by the FCC, was launched in February, 1961. Hartford, Connecticut was the market chosen for the test because it conformed to the FCC's test market requirements, and had a suitable television outlet available. (Howard, 1980: 20) As well, it was located in a "strategic" area between Boston and New York, it was served by all three commercial networks, it received service from both VHF and UHF stations, and it had a sophisticated population with a wide variety of tastes and interests and with a relatively high educational level. (Arroyo, 1966: 83)

For the test, Zenith was to manufacture and sell decoders to the RKO General Phonovision Company in Hartford which, in turn, would equip the local TV station's (WHCT) transmitters with encoding devices. Zenith expected to produce 50,000 decoders for Hartford in the first year, but service was scheduled to commence as soon as decoders were installed in 2,000 homes. (Howard, 1980: 21)

The pay service was activated when the subscriber set the appropriate code number in the decoder for a chosen program. He would then tune in the channel and the picture

would be unscrambled.. A sealed tape inside the decoder would record what programs were watched and the cost of each program. (Howard, 1980: 21)

The programming fare was planned to include Broadway plays, current movies, operas, ballets, symphonies, and sporting events. Only 30 hours a week were allotted to pay programs on WHCT, while 40 hours a week were devoted to traditional sponsored programs. (Howard, 1980: 22)

The debut of pay programming on WHCT was on June 29, 1962. The service was begun despite the fact that only 200 homes were equipped with decoders, far short of the original aim for initial subscribers. (Howard, 1980: 22)

Also, programming on the service did not conform to the original aims. Movies came to constitute 85% of programming time. Live sports events not carried on conventional TV channels accounted for most of the rest of the programming. There were very few plays, operas, ballets or symphonies exhibited on the service. This was because the cost of major specials was too high for the pay operators to afford. Even the movies were generally more than six months old. (Howard, 1980: 24)

The service was able to eventually increase its subscribers to 5,000 homes by its third year of operation, which represented 4.5% of WHCT's own net weekly circulat-

ion prior to its pay operation. These numbers were enough to encourage the FCC to extend the test for another three years. The renewal of WHCT's pay TV authorization was made on May 21, 1965. (Howard, 1980: 25)

The Hartford experiment ended in January 1969, 6½ years after it started. The service was never able to attract more than 5,500 paying subscribers because it did not carry enough live programming to satisfy its subscribers or to attract more subscribers. There were three fundamental reasons that WHCT could not deliver more live programming:

- 1) New York theatrical unions would not allow their plays to be broadcast because they thought this would decrease their theatre audiences;
- 2) high-cost specials or major sports events were too expensive to buy for a limited audience paying \$1.25 per home; and
- 3) the commercial networks by that time were offering almost-new movies, major sports events, and numerous specials free.

Due to the lack of a subscriber base, Zenith and RKO General lost an estimated \$12 million over the life of the experiment. (Howard, 1980: 28) Other reasons suggested to explain the heavy losses were that a great deal of exper-

imentation with the programming content of the service was carried out, and the method of metering subscriber usage was rather awkward. (Edmunds, 1976: 13)

However, despite these troubles the FCC concluded that the Hartford experiment indicated that it may well be in the national interest to authorize subscription television operations on a permanent nationwide basis. It also concluded that the diversion of the audience to pay TV would not seriously impair conventional television service. (Howard, 1980: 32)

But, in the years after the Hartford experiment, court actions in the U.S. were brought against the FCC by movie theatre owners and conventional broadcasters to prohibit pay TV operations. Both groups felt that pay TV threatened their livelihood. As things turned out, the theatre owners lost their case, but the conventional broadcasters were able to force the FCC to issue a set of "anti-siphoning" regulations. These were designed to protect the existing programs on advertiser-supported TV while "permitting new uses of the broadcast waves." These regulations required that a pay TV operator could only use feature films that were less than three years old, or more than ten years old. Also, foreign films or films for which conventional broadcasters had no interest could be shown on pay

TV. As for sports events, pay TV could not include those currently being broadcast on conventional TV or special events, like the Olympics, if they had been broadcast in the last ten years. (Edmunds, 1976: 13)

Even after the settlement of these disputes, pay TV was slow to develop in the U.S. Feasibility studies indicated that the public was not particularly interested -- probably due to a general ignorance about what pay TV was and what it could offer. (Edmunds, 1976: 13)

PAY CABLE IN THE U.S.

However, by 1975 pay TV through cable systems had gained considerable momentum. U.S. cable operators were attracted to the idea of providing other services at an additional fee to produce revenue, since the use of additional channels on a cable system meant only a slight extra cost. Once their interest became apparent, a number of program suppliers rapidly came into being, and would either supply a schedule of programs for a single channel or negotiate on behalf of the cable operator with the Hollywood producers for the rights to program a channel of pay television. Pay cable's biggest thrust came from satellite-

fed program services which provided cable systems with high quality transmission of movie packages and specially produced shows. An additional channel on the cable service was offered to a person who wished to subscribe to pay cable. Non-subscribers were prevented from viewing the pay channel by a trap placed at the connection to their home, or else, the signal was scrambled and subscribers were provided with descramblers. (Edmunds, 1976: 14)

The largest U.S. pay cable supplier of programs was Home Box Office (HBO), a venture of Time Inc., which became available to U.S. cable systems through satellite distribution in 1975. HBO had a phenomenal growth — rising to 591,439 subscribers by the end of 1976, and to approximately one million subscribers by the end of 1977. At the end of 1979, HBO served nearly four million subscribers in 50 states, Puerto Rico and the Virgin Islands. (Howard, 1980: 39)

In 1976 Viacom International Inc. started "Showtime" as a competitive service to HBO. At the end of 1979, Showtime had nearly one million subscribers in 46 states. As well, a number of other pay cable services emerged in the U.S. during the late 1970s. (Howard, 1980: 39) In 1980 alone, pay TV subscriptions in the U.S. increased by 50%. In October 1979, there were only 50 markets offering such

services; in 1981 the number exceeded 500. (CBL, Sept. 1976: 12)

The FCC attempted to regulate the burgeoning pay cable industry, but in the Home Box Office case of 1977*, the U.S. Court of Appeals for the District of Columbia held that the FCC exceeded its authority over cable TV by issuing the anti-siphoning restrictions on pay cable outlined above. The court stated that there was no need for regulations on pay cable programming. The appellate court then voided the FCC's pay cable rules. Later in 1977, the U.S. Supreme Court declined to review the decision, thereby leaving the lower court's ruling intact. (Howard, 1980: 41)

The decision meant the pay TV industry would develop in response to market demand rather than artificial structuring by federal, state or local regulatory programs. As well, the decision led to the rescission of all anti-siphoning rules against pay TV, so there was no restriction on the programs that may be purchased by cable systems to be used for pay TV programming. The fact that pay services in the U.S. were virtually unregulated made it a very appealing venture for private entrepreneurs to get involved in. (Christenson, 1978: 501)

* Home Box Office v. FCC, 567 F. 2d 9 (D.C. Cir. 1977)

The FCC's Special Staff Inquiry (1980: 3) later conceded that the restrictions on pay cable programming limited the development of pay programming networks in the U.S. All evidence to date indicates that the FCC's inhibitions of pay programming reduced rather than expanded the range of viewing choice available to the public. For example, the existence of a substantial unmet demand for additional viewing fare has been vividly shown whenever the FCC removes regulatory barriers to the growth of networks using alternative technologies and financing methods. (FCC, 1980: 3)

An indication of the validity of this statement is supplied by the Nielson ratings which showed that by February 1981 pay TV accounted for 16% of all prime time viewing. Also, total pay TV audience shares amounted to 20%. (Foster Advertising, 1981: 49)

Most major commentators on the broadcasting industry feel that by 1990, 35% to 45% of U.S. homes which own televisions will have access to one or more pay services. Also, the Pay TV Newsletter forecasts that by 1990 pay TV will be an \$8.4 billion per annum industry. (Foster Advertising, 1981: 58)

PAY TV'S POTENTIAL IN CANADA

However, the American experience with pay cable is necessarily different from what Canada can expect. Unlike the U.S., Canadian major cities all have successful cable TV operations. In the U.S. cable penetration was not nearly so high before pay channels were offered. Therefore, American pay TV rates were subsidized through increased cable revenues gained from an overall growth in cable penetration. But in Canada, a pay channel is just an added feature to an already popular cable service, so a Canadian pay service, to a much larger extent than an American pay service, must stand or fall as a profit-making venture on its own merits. (Watson, 1976: 18)

Evidence which indicates the potential unpopularity of pay TV in Canada comes from an analysis of the data from 131 U.S. cable distribution systems which offered pay TV as of January 1, 1976. It revealed that a very strong negative relationship exists between basic cable penetration and pay cable penetration. Systems with high penetration rates for cable itself tend to achieve lower pay penetration rates. This finding suggests that the pay TV penetration rate will be lower in Canada than in the U.S. While Amer-

ican pay penetration rates averaged 24.1%, the average penetration rate for cable itself among these systems was 46.5%. Therefore, the average pay penetration figure as a percentage of homes passed, i.e. pay TV penetration as a percentage not of cable subscribers but of all homes within reach of the signal, was in the order of 11% to 12%. But, in Canada most major communities have basic cable penetration rates of over 60% so the assumption that the aggregate American pay penetration average can be used directly to estimate Canadian penetration cannot be supported. The idea that 24.1% of Canadian, like American, cable subscribers would purchase pay TV leads to the belief that pay penetration would be approximately 15% of homes passed in Canada. But if the American example is followed through accurately, one would find that only 11.5% of homes passed in Canada would purchase pay TV. (CBL, Sept. 1976: 43)

Apart from the negative evidence against pay TV in Canada, there are also positive arguments. For instance, Canadians have already accepted cable TV, so pay TV would appear to be the next logical step. The Canadian cable industry in the early 1980s was better organized, more consistent in marketing skills and in much better financial condition than American cable services were when pay cable was introduced in the U.S. Therefore, the industry could

do a better job of selling pay TV to the Canadian public. Moreover, a number of geographic and structural differences demonstrate that Canadian acceptance of pay television would substantially exceed U.S. acceptance. For instance, in Canada more people are likely to stay home and watch television during the cold winter months, thereby increasing the demand for new television services. (Burns-Fry, 1976: 5)

Another reason for the likelihood of pay TV's popularity in Canada is the fact that Canadians must possess a 30 channel cable TV converter to receive the pay channels. CROP and Board of Broadcast Measurement surveys have shown that Canadian homes with converters are predominantly younger and up-scale in income, education and occupation. They watch more television and allocate their viewing among more channels. This converter demography in Canada conforms very closely to the portrait of pay TV subscribers in the U.S. Therefore, pay TV appears likely to attract many converter owners in Canada, where converter penetration was believed to be at 25% of Canadian households in 1981. (Foster Advertising; 1981: 76)

Further evidence of pay TV's potential success in Canada was provided by two public opinion polls conducted in 1979 which had nearly identical results. A CROP survey

showed the likelihood of 31% of Canadians subscribing to pay TV. (Foster Advertising, 1981: 69) While a Canadian Cable Television Association (CCTA) poll revealed that 34% of Canadians would be likely to purchase a pay service. (CCTA, 1979: 3)

The evidence suggesting the positive aspects of pay television in Canada, as well as the evidence of pay TV's negative aspects, were taken into account by the CRTC. The Commission began considering pay TV for Canada in 1970, but because of the conflicting evidence held off a decision on the issue until 1982. The next chapter of this paper traces the chronological development of the CRTC's regulatory process in regard to pay television.

A PARADIGM OF A POLICY PROCESS

However, before analyzing Canada's pay television policy and the processes for developing that policy, it is necessary first to take a general overview of a policy-making process in order to compare Canada's process to a hypothetical model.

A policy process can most generally be defined as " a pattern of interaction involving various institutions

of government and non-government actors who provide the instruments of policy through which values are ultimately allocated." (Chandler, 1979: 121)

Every policy process is made up of at least four activities: (1) identification, (2) formulation, (3) selection, and (4) implementation. (Chandler, 1979: 122) Problem identification sets the policy agenda by selecting certain problems as the basis for public action. In some situations (like the issue of pay TV in Canada) issue identification may be deliberately generated by public authorities and powerful economic and social groups. Once a problem is identified, courses of action are formulated to deal with it. This is followed by the next and most crucial step; policy selection. At this stage, decisions are made which will either approve, reject or modify patterns of policy. The final stage is the implementation of the policy choices. This step may sharply alter the meanings and effects of governmental decisions. The ease and speed of implementation will result, in part, from the legitimacy of the process and the officials who operate and support it. (Chandler, 1979: 122)

There are two methods of decision-making which lead to policies: (1) disjointed incrementalism and (2) rationalism. The former suggests that policy makers have only

partial information and a limited analytical capacity, so they operate within a narrow range of alternatives. The policy-making process is made up of a disjointed series of piecemeal decisions, and policy development only occurs through gradual and limited changes. On the other hand, the rational model is more comprehensive. Ideally, decision-makers achieve rationality through a broad evaluation of all viable alternatives and their consequences. (Chandler, 1979: 123) Before the policy-makers will take action, they will want information on the alternatives from different interest groups. They will then use this input with the intention of designing a policy that is as unlikely to fail as possible. (Richardson, 1969: 102)

Interest groups choose to aid government bureaucracy rather than compete with it because they do not have the large scale and complex social concentration required for the development and application of technology. (Van Loon, Whittington, 1976: 19) So instead of trying to change the content of government regulations in principle, interest groups only aim at gaining concessions on the detailed content and application of the government's policy. They attempt to convince the policy-makers that concessions are not only in the interests of their lobby, but serve the public interest as well. They also must show that conces-

sions are in the government's own political interests.

(Richardson, 1969: 61)

The lobbying for concessions by various interest groups turns policy-making into a process of conflict and compromise, which, in practice, makes effective action difficult. Such action is likely to prove more difficult if governments hand over what are essentially political problems to extra-governmental and extra-parliamentary bodies in order to achieve a high degree of consensus between conflicting forces. (Richardson, 1969: 107)

A legislative directive which grants an agency the authority to defend the public interest creates a very wide range of discretion for that agency. Although its decisions do not directly allocate funds or cost the government a great deal, they do indirectly entail very significant costs and benefits for those individuals or groups affected by them. (Chandler, 1979: 4) As a result, the interest groups put a great deal of pressure on the agency and this situation may end up with the agency being captured by the very interests it is supposed to control. (Chandler, 1979: 134)

This can happen because a regulatory agency does not have the power to accomplish structural changes, therefore, it has no natural constituency, save the industry it regulates. So if the regulated industry gains a strong influ-

ence over the agency, the regulators may end up retarding technological innovations in the particular field of interest because these innovations may threaten the position of their client industries. (Owen, Beebe, Manning, 1974: 147)

Another drawback to regulatory agencies' ability to exercise effective power is the unfortunate tendency among governments to use these agencies as tools of political patronage, which means that not all regulators will be well qualified for the role they are appointed to perform.

(Owen, 1974: 177)

CHAPTER II

REGULATORY HISTORY OF PAY TV IN CANADA

As stated in the previous chapter, it was not until 1970 that the CRTC began to consider the notion of pay television. That year the first pay TV proposal submitted to the CRTC was a request to simultaneously use several broadcast frequencies carrying scrambled U.S. television signals to Edmonton, Regina and Saskatoon via over-the-air transmitters. This was turned down by the Commission because it did not conform to the objectives of the Broadcasting Act, (CRTC, 1978: 8) which states in section 3(d) that programming provided by the Canadian broadcasting system should use predominantly Canadian creative and other resources.

In 1972, Rogers Cable TV Ltd. applied for an in-home cable pay TV service. The CRTC deferred consideration of

the proposal because the Commission had no general policy. Later that year, the Commission issued its first public announcement on pay television. It invited experimental proposals which could "contribute to the achievement of established broadcasting policies." It stated that if pay TV were to be permitted to develop in Canada, it must be developed "in the spirit of the Broadcasting Act." (CRTC, 1978: 8) But, the Commission turned down all proposals it received because they were not in conformity with the Act's requirement that they make a significant and positive contribution to the Canadian broadcasting system. (Fed-Prov Conference of Communication Ministers, 1979: 7)

In 1973, Coaxial Colorview Ltd. and Rogers Cable applied for three pay TV channels to compete with an American company which was sending signals into the Toronto area. As well, the Canadian Football League asked to present a few of its games on pay TV that year. The CRTC deferred consideration on these two matters until after a public debate later in 1973. However, there was no public debate that year, just a panel discussion. It was not until February 1975 that a CRTC position paper dealing with pay TV was released. (CRTC, 1976: appendix 1)

In the position paper, the Commission (1975: 33) described the possibilities and problems foreseen for pay

TV, and provided a tentative indication of measures that might be introduced to assure that pay TV would contribute to broadcasting objectives. The Commission stated that unless proposals could be developed which would further the objectives of the Broadcasting Act, the impact of pay TV on the Canadian broadcasting system could be highly detrimental. They felt this way because if pay TV was successful in Canada, it would fragment the Canadian television audience and consequently diminish the revenues available from advertisers to support the Canadian commercial television networks. This development would not be unacceptable to the Commission if the pay TV channel offered a predominance of Canadian programming as demanded by the Broadcasting Act, but if it relied largely on foreign programming it would further weaken the Canadian broadcasting industry. With this in mind, they (CRTC, 1975: 3) forecast that,

if properly conceived and developed within the framework of the objectives of the Broadcasting Act as an integral part of the Canadian broadcasting system, the Commission envisages that pay television might present potential new opportunities for the development of the Canadian broadcasting and program production industries.

The Commission went on to say that pay TV must be used as a vehicle to further the production and exhibition of Canadian material. There would be little reason to permit pay TV if it develops in the same way as the Canadian

movie industry. The CRTC (1975: 5) said:

A balance must clearly be established between the use of Canadian and the use of foreign produced material as well as the allocation of funds for purchase and production.

Funds must be identified as flowing to the direct benefit of the Canadian broadcasting and program production industries, with a minimum of direct and continuing regulatory control. (CRTC, 1975: 6) The Commission believed that this method would result in the improved quality of Canadian programming and allow the Canadian broadcasting system to achieve the Broadcasting Act's objectives of sustaining and strengthening the cultural, political, social and economic fabric of Canada while providing diverse, comprehensive programming of a high standard using predominantly Canadian creative and other resources. They hoped new types of programming would be developed appropriate to the needs and limitations of a pay TV service. (CRTC, 1975: 8)

However, the optimistic outlook of the CRTC was tempered by three major concerns:

- 1) fragmentation of the national television audience;
- 2) the position of the Canadian broadcasting and program production industries against the importation of more foreign material; and
- 3) the siphoning of programs from conventional television

to pay TV.

The Commission's opinion about Canadian programming has already been mentioned in the preceding paragraphs. As for the other two concerns, the Commission felt fragmentation must be accepted as the overall broadcasting system develops, but it must be as limited as possible. Siphoning, on the other hand, is unacceptable because programs that are currently being shown on conventional television should not be moved to pay TV, hence requiring people to pay for programs they once received at no direct cost. (CRTC, 1975:

4)

The CRTC (1975: 3) favoured the licensing of pay TV network operators already involved in broadcasting and program production. The Commission had not decided whether programming would be distributed by broadcast signals or through the facilities of cable. It was definite in the belief that the service of providing programming and supplying, installation and maintenance of the appropriate decoding device should be entirely provided by the network licensee. However, the network could enter into an agreement with the local cable company where the cable operator would supply, install and maintain the decoders and collect the fees for the service from the subscribers. (CRTC, 1975:

12)

In order to examine the issue of pay television more clearly, the CRTC held a public hearing in June 1975. The Commission considered 40 submissions from interested parties on the introduction of pay TV in Canada. These briefs all conformed to the self-interests of submitters. For example, six were from broadcasters who believed the introduction of pay services was premature and detrimental to broadcasting in Canada. However, there were 14 briefs received from cable operators who favoured the immediate introduction of pay TV in Canada. There were also seven briefs from the program production industry which said that if pay were to be introduced it should provide the maximum financial benefits to producers while increasing exhibition opportunities. As well, 13 briefs were submitted by other groups such as the Consumers Association of Canada and the Canadian Broadcasting League, which indicated little public support for the introduction of a Canadian pay TV service. (CRTC, 1978: 9)

In its resultant policy statement issued in December 1975, the Commission decided that the potential disruption to be caused by the introduction of pay TV was too great a risk to the Canadian broadcasting system which, at the time, was in the process of adjusting to new communication policies and developments. The CRTC (1975: 14) said

... it is highly questionable whether the Canadian broadcasting system can absorb the impact of pay television service. The question is clear. Can a service be developed, devoid of commercial content and without interruption of program material, which will be of sufficient interest to the public to be marketable and financially sound and at the same time provide a new impetus to the growth of the Canadian program production industries?

In order to attempt to answer this question, the Commission stated its willingness to continue to study "the means by which pay television can be introduced in a manner consistent with the preservation and development of the existing broadcasting system." (CBL, Sept. 1976: 10)

However, the cautious attitude of the CRTC was soon changed by new developments in Canada's pay TV environment. These included the bootlegging of American pay TV signals by some Canadian apartment buildings. Because of this, the Commission felt there was a need to legalize pay TV operations in Canada and encourage investment by substantial Canadian interests. (CBL, Sept. 1976: 14) Also, some provincial governments were interested in having pay TV services established in their provinces and taking regulatory control of the industry's development. Finally, cable TV operators were lobbying the federal government to legalize pay TV as a way to increase their profits. (CCFM, 1976:

These concerns led the federal Minister of Communications at the time, Jeanne Sauve, to announce on June 2, 1976 that the Canadian government would pursue the idea of pay television for Canada. Of course, she preferred to emphasize the positive aspects of the federal government's decision, and not the concerns mentioned in the previous paragraph. Therefore, in her speech, Mme. Sauve said she was firmly convinced that the introduction of pay TV "will be a watershed in the development of broadcasting, with major structural implications for the entire system." (CRTC, 1978: 10) She saw pay TV as a way to create wider viewing opportunities for Canadian programs, especially feature films. She said, "A structure will have to be devised that will maximize pay TV's potential benefits for our broadcasting system, and for viewer choice." (CRTC, 1978: 10)

Mme. Sauve (1976: 7) stressed three objectives for pay TV in Canada:

- 1) It must provide a range of programming which does not duplicate that now offered by broadcasters, and must do so without siphoning programs from the broadcasting system. To ensure this, federal regulation is necessary for the orderly and coherent provision of pay services to the entire Canadian viewing public.

2) It must ensure the production of high-quality Canadian programs that Canadians will watch.

3) It must ensure that programs are produced in Canada for international sale.

She hoped pay TV would make a contribution toward solving the most crucial problem in Canadian broadcasting, that of the underdeveloped state of the Canadian production industry. (1976: 3) As well, a pay network would create a Canadian distributor of programs, an entity which did not then exist. This would mean a strong presence to further the production, exhibition and promotion of Canadian programs. (Sauve, 1976: 8) The Minister said

. . . we must take care that pay television is introduced in an orderly and controlled fashion. We must ensure that it brings maximum benefit on a national plane to all the groups interested in broadcasting — private and public broadcasters, cable operators, program producers, actors, writers, and most of all the Canadian public. (1976: 2)

She added that to achieve these goals, the pay TV system should reflect regional interests with some of its programming. (Sauve, 1976: 10)

Sauve expressed reservations about pay television exacerbating the communications disparity between rural and urban areas if it was only carried on cable TV, which was primarily an urban service. She felt the federal government should demand that pay programming be made available to con-

ventional broadcasters after an appropriate time delay. This would give all Canadians the opportunity to view the quality Canadian programming which pay TV would develop.

(Sauve, 1976: 5) Sauve also said that the CRTC should develop a policy on pay TV that could allow a call for licence applications to be made before the end of 1976.

(Burns-Fry, 1976: 1)

On June 30, 1976 the CRTC formally called for submissions on the form and function of a pay TV organization to assemble, produce and acquire pay TV programming for distribution to licensed broadcast undertakings. The Commission received 105 submissions, but indicated that few had responded to certain fundamental questions dealing with the form and function of the proposed pay TV controlling structure. (CRTC, 1978: 12) For this reason, Sauve's plan to call for applications before the end of 1976 to operate Canadian pay networks had to be postponed.

Instead, the CRTC called for revised submissions to be presented at a public hearing June 13, 1977. A total of 181 briefs were received, but only 41 of them were updated from 1976, while 35 were new. The others were the same.

(CRTC, 1978: 13)

When the submissions are broken down, it is revealed that 100% of the telecommunication carriers, 86% of the

cable operators and 69% of producers favoured the introduction of pay TV. But, among broadcasters there was 57% opposition. As well, 62% of public interest groups were opposed. Commercial groups were evenly divided -- 30% opposed, 30% in favour, and 40% had no opinion. If it were to be introduced, the majority of submissions expected feature length films to dominate programming on pay TV. As well, a substantial majority felt Canadian content standards should be approved. Overall, a majority (63%) of all submissions did not express any preference for an organizational structure of pay TV, and those that did indicated a preference consistent with their dominant interests. (CRTC, 1978: 17)

Almost all of the briefs (94%) expressing an opinion, believed further study was needed on the question of pay TV. However, 65% of all submissions expressed no opinion. (CRTC, 1978: 30) But, of those expressing an opinion, a significant majority felt that pay TV would have a negative impact on the Canadian broadcasting system at that particular time. The CRTC's report (1978: 31) did not detail the various reasons given in the submissions for pay TV's negative impact because it felt there was a general lack of a comprehensive assessment of the possibilities and prospects for a Canadian pay TV system in all but a few submis-

sions. Therefore, it believed only the submissions' general attitudes were worth noting because the substance either was not there or was not adequate.

Before the second set of submissions, the CRTC conducted a survey of the public's attitudes toward pay television. The survey did not reveal a compelling demand for pay TV. It indicated that only 6% of Canadians had heard a great deal about pay TV, and 15% had heard something. As well, only 14% of cable subscribers said they would subscribe to a pay channel if it was offered, and 18% said they would purchase a pay-per-program service. (CRTC, 1978: 34) As a result of all the information it received, the Commission decided against calling for applications to operate a pay network. The CRTC (1978: 54) said:

To establish a national pay-television system with a single national agency on the basis of a proposed promise of performance which may immediately require concessions to sustain its operational activity, would be unacceptable.

Instead, the CRTC suggested that pilot projects be carried out in representative market areas to test variables such as different corporate structures, siphoning and fragmentation consequences, programming in different languages and the development of various program packages, alternative access arrangements for Canadian film producers, alternative distribution methods, different methods of exhib-

ition, Canadian content regulations and subscriber demand and sensitivity to subscription rates. (CRTC, 1978: 53)

Although the Commission believed there were many variables to be tested, it still saw fit to propose regulations for a future pay TV system. It felt that Canadian programming should make up 50% of the programming schedule, while 35% of a licensee's gross revenue would go toward the production of Canadian programming. Canadian programs which require substantial financial investment, engage a preponderance of Canadian talent and guarantee foreign sales would receive extra credit when determining the percentage of Canadian content. (CRTC, 1978: 51)

On the question of siphoning, no regulations were proposed. This was because programming on conventional television is subject to change over time which causes difficulty in determining what events currently broadcast by conventional TV could not be offered on pay TV instead. Any anti-siphoning principle would require a labyrinth of rules and regulations to maintain it. (CRTC, 1978: 50)

As well, no policy on audience fragmentation was indicated. The Commission only said that the positive benefits of a new predominantly Canadian service, would offset the negative effects of the audience loss to conventional broadcasters. (CRTC, 1978: 50).

The Commission thought a privately owned company would be the best form of ownership for Canadian pay TV, if it had a wide range of relevant interests and capabilities. It would best understand the need for commercially successful programming; administrative efficiency, the reduction of operating expenditures and would have heightened entrepreneurial initiative. (CRTC, 1978: 40)

The CRTC felt the pay TV agency should determine the most appropriate method to be used for distribution. Distribution of the pay signal would not have to be by cable if the exhibitor could show another more profitable means of distribution for his area. The Commission felt it was important that pay TV be distributed nationally, but its physical extension and expenditures on technical facilities should not be at the expense of the development of quality Canadian programming. (CRTC, 1978: 45) This is because Canadian programming is of fundamental importance to the principles of broadcasting policy in this country, and, although it is necessary for pay TV to be acceptable to the public, commercial success must not be achieved at the expense of these principles. (CRTC, 1978: 36)

At the time of its Report on Pay Television, the CRTC (1978: 39) believed a single national network, offering both an English and a French service, was the most

effective manner of distributing pay TV in Canada. The Commission outlined eight reasons for this conclusion:

- 1) it offers maximum opportunity to generate and consolidate available resources;
- 2) the acquisition of foreign material would be less costly without domestic competition;
- 3) the costs of administration, distribution and marketing will be limited;
- 4) national exhibition, access and distribution for quality Canadian programming would be guaranteed;
- 5) it will have sufficient resources to initiate and underwrite imaginative programming, to risk capital on new Canadian talent, and to adopt a flexible means of remuneration for Canadian produced programming;
- 6) it would be in a most advantageous position to negotiate terms with common carriers for distribution and with local operators for exhibition;
- 7) it will have the necessary flexibility and capability to respond to regional preferences and offer programming for French-speaking audiences; and
- 8) it would be directly responsible to the CRTC's regulatory requirements for the achievement of national policy objectives.

PROVINCIAL ATTEMPTS TO REGULATE PAY TV

While the CRTC was locked into discussions about pay TV, some provinces decided to take action on their own. Both Saskatchewan and Manitoba passed acts giving each province control over cable services, including pay TV, within their political boundaries. Quebec also passed a regulation which gave the Quebec Public Service Board control over pay TV in that province. In British Columbia, Rogers Cable announced plans to move ahead with a closed-circuit system in West Vancouver that would provide a pay service with or without the CRTC's authorization. The Communications Minister of British Columbia, Patrick McGeer, said "technology is outstripping the Federal Government's ability to regulate it." (Foster Advertising, 1981: 73)

In an attempt to achieve an understanding between the federal and provincial governments, the federal and provincial Ministers of Communication met in March 1978. They agreed that the federal government should develop a pay TV model in conjunction with the provinces who wish to do so. The service would take into account federal and provincial interests. (Fed-Prov Communication Ministers, 1979: 7)

In addition, the Ministers set objectives for pay TV which said:

- 1) It must satisfy the demands of the public for varied and high-quality programming and ensure benefits to Canadian broadcasting, program production, and creative talent.
- 2) It must ensure that Canadian program producers have significant access to distribution systems and maximize the proportion of revenues available to acquire and invest in Canadian programs.
- 3) It must contribute to the production of high-quality Canadian programs that Canadians will watch and ~~pay for~~ and which are suitable for international sale.
- 4) It must provide services in English and French and ensure fair regional balance in the production and distribution of programming. (Fed-Prov Communication Ministers, 1979: 3)

The Ministers also offered guidelines for pay television which included:

- 1) The initial system should be a single agency which would purchase programs and distribute them to local exhibitors.
- 2) The surplus owned by the agency should flow to the direct benefit of the Canadian program production industry.
- 3) Consideration should be given to both pay-per-channel service and pay-per-program service. Perhaps a combination.

of the two would evolve over time.

4) A balance must be established between the use of Canadian and foreign programming.

5) The agency could be a mixed consortium involving both public and private participation. As well, federal and provincial agencies could combine with broadcasters, producers and cable operators. (Fed-Prov Communication Ministers, 1979: 9) The Ministers (1979: 3) described pay TV as a major first step in solving the problems of inadequate broadcasting service to some regions of Canada, and the lack of availability of domestically produced programming material.

SASKATCHEWAN'S PAY TV NETWORK

Despite the attempts of the federal government to come to an understanding with the provinces on pay TV, Saskatchewan started a closed-circuit service operated by Cable-Com, a company authorized by SaskTel to deliver pay signals via cable. It began broadcasting in January 1980 and served cable converter owners in Regina, Saskatoon and Moose Jaw. The Saskatchewan government started a pay TV network as a challenge to federal authority. The NDP government consid-

ered CableCom to be a provincial undertaking, and therefore under its jurisdiction. The federal government did not agree with Saskatchewan's position, but it would not take the province to court because the pay service had a very small market and did not pose a significant threat to Ottawa's plans to license a federally regulated national pay service. As well, Ottawa feared that the courts would support the province's jurisdiction. (Waddington, 1985)

CableCom offered programs drawn from Showtime originally, but after it became established it started buying films from various distributors through supply agreements. The Showtime agreement was more expensive for CableCom than negotiating its own agreements would be, so it switched. Most of the programming it purchased was Hollywood feature films, although it also offered Canadian features if it could get them. (Waddington, 1985)

CableCom could not purchase as many Canadian feature films as it wanted because CTV let the Canadian distributors know that films already broadcast on CableCom would have a lower market value to CTV. Since the distributors were not going to receive as much money for Canadian films from CTV if they had already been shown on CableCom, distributors were reluctant to sell films to CableCom. The reason CTV offered less for films already shown on CableCom

was not because the market value of those films was that much less than it normally would have been -- after all, CableCom's market was very small -- but because network TV did not want a pay system in Canada and would do what it could to keep pay TV from getting off the ground. (Waddington, 1985)

Apart from feature films which made up around 90% of its programming schedule, CableCom also had some short films and "oddball" programs* that would never have appeared on network television." The pay service was offered to subscribers at a charge of \$9.95 a month. The signal was scrambled so that non-subscribers could not watch the service, while subscribers who had a trap installed at their house would have the signal unscrambled for their television sets. (Waddington, 1985)

The market areas served had as high a rate of cable penetration as anywhere else in Canada -- around 60% -- because they were too far from U.S. cities to pick up any American television signals. CableCom was able to attract enough subscribers from this large base to begin to break even on its operation by the time it ceased operating in February 1983. (Waddington, 1985)

* For example, programs like the Mr. Nude Canada contest, or one featuring a topless woman magician.

(52)

The reason CableCom closed down its operations was because of two events which occurred almost simultaneously. One was the granting of a licence by the CRTC to First Choice to serve all of Canada with a pay TV network, and the other was the defeat of the Saskatchewan NDP government by the Conservative party. The ideology of the new government did not allow it to continue operating a public pay TV network. As well, the cable companies in the province would rather collect the \$6 per month more in subscriber rates charged by First Choice than CableCom, so they put pressure on the government to cease CableCom's operations and let First Choice take over. CableCom's subscribers were encouraged to switch to First Choice and pay the extra \$6 per month. Most of them did because the marketing campaign convinced them that a 24 hours-a-day service was worth 60% more than an 8 hours-a-day service, even though the extra hours were filled with repeats. (Waddington, 1985)

PRESSURE TO LICENSE PAY TV SERVICES

The issue of federal or provincial control of pay TV in Canada was not the only issue of mounting concern

facing the CRTC in its discussions on pay TV prior to the 1981 licensing hearings. Pressure from the cable industry to license pay services had existed since 1972. Its call for action on pay TV was becoming stronger all the time due to the industry's fear that competitors not subject to CRTC regulations would corner the pay TV market before cable operators had a chance. These competitors included operations using a closed-circuit videotape technique to present their programming, and subscription television operations using over-the-air transmission of programs. (CBL, Sept. 1976: 9) Adding to the complexity of the problem was the growing number of unauthorized earth receiving stations picking up U.S. satellite signals and transmitting them to subscribers in Northern Canada, and in some instances, viewers in large hotels, such as the Holiday Inn in Winnipeg. It began to appear that Canadian satellites would have to deliver pay TV to Canadians to satisfy the desire for new programming services and offer a less expensive alternative to the pirating of U.S. signals.

In order to further explore the options, a consultative committee chaired by J.V. Clyne was appointed by the federal Minister of Communications, Jeanne Sauvé, in 1978 with a mandate

to produce specific recommendations on a strategy

to restructure the Canadian telecommunications system to contribute more effectively to the safeguarding of Canada's sovereignty; and to make recommendations on the future of the Canadian telecommunications system in relation to new technologies and the need for Canadian software and hardware resources to meet foreign competition, with particular reference to the role of broadcasting in contributing to the preservation of the sovereignty of Canada, including . . . the framework and timing for the introduction of pay-television nationally. (Clyne, 1979: i)

The report of the Clyne Committee was released in March 1979. It stated the belief that Canadian culture cannot be protected by restrictions on the access of Canadians to foreign programming. Instead, "the best way to support Canadian culture lies in the pursuit of superior quality programming and the promotion of opportunity to view and appreciate these productions." (Clyne, 1979: 33)

The Committee felt that pay TV could encourage the production of high-quality programming, but Canada was not ready for the introduction of a national pay service at the time. They recommended that the CRTC develop a strategic policy for the introduction of pay TV in Canada before calling for applications from potential pay licensees. (Clyne, 1979: 43)

While the federal Department of Communications considered the report from the Clyne Committee, the CRTC empowered another Special Committee to hold hearings dealing with

pay TV in March and April, of 1980. The Committee, led by Real Therrien, tabled its report in July of 1980. It did not make any recommendations concerning the structure of a possible Canadian pay TV industry, except to say it supported the introduction of pay TV and other optional services provided they make a significant contribution to broadcasting in Canada. As well, the new services should make effective use of Canadian resources and allow a significant amount of revenue to flow to the Canadian program production industry. However, the Committee urged the CRTC to delay a decision on pay TV until hearings on the extension of television service to Northern and remote regions of Canada were held. (Foster Advertising, 1981: 68)

The idea for pay TV in Canada came closer to reality on October 21, 1980 when the federal Minister of Communication, Francis Fox, addressed the Broadcast Executives Society in Toronto. In his speech, Fox gave tacit approval to the introduction of pay TV, while repeating the Therrien Committee's necessary provisions. He said he would request public participation on the introduction of Canadian content regulations for pay TV. (Foster Advertising, 1981: 70)

On April 21, 1981 the CRTC called for applications to originate pay television services. The hearings were scheduled to begin September 24, 1981. (CRTC, 1981: 11)

In the call for applications, the CRTC stated that pay TV should (a) contribute to the realization of the objectives set out in the Broadcasting Act and strengthen the Canadian broadcasting system; (b) increase the diversity of programming available to Canadians; and (c) make available high-quality Canadian programming from new programming sources by providing new opportunities and revenue sources for Canadians currently unable to gain access to the broadcasting system. The Commission felt the ability to open up the system to Canadians was a major criterion in the consideration of pay TV proposals. (CRTC, 1982: 1)

The licensing hearings lasted until October 15, and in that time 27 applications were presented. Most of the applicants proposed some form of discretionary service, but two sought a licence for a universal service. This service would consist of a single channel offered on the standard cable service. A person's cable subscription rate would rise two dollars per month to pay for the channel's program production and acquisition costs. The channel and the increased subscription rate would be mandatory for all cable subscribers. (CRTC, 1982: 2)

Of the applicants for discretionary services, seven wanted a national service based on first-run feature films, made-for-TV drama, variety specials and sports. There were

(.57.)

also 11 applications for regional services based on a similar format. Almost all envisaged a system of satellite delivery ~~to cable systems for local exhibition~~. They limited themselves to the packaging and distribution of programs with no direct involvement in production. (CRTC, 1982: 3)

It was the feeling of the Commission that while all of the applicants addressed, to a greater or lesser extent, the objectives and considerations set out in the call, none met them fully. (CRTC, 1982: 4) Nevertheless, six licences were approved in March 1982. One for a national general interest service in each official language (First Choice/Premiere Choix), and one for a national special interest service (C-Channel). There were three licensed regional general interest services; in the Atlantic region (Star Channel) and in Alberta and Ontario (the Superchannels). As well, a multilingual service in British Columbia (World View TV Ltd.) was licensed. (CRTC, 1982: 10) The CRTC said it would call for two further regional general interest services. One, a French-language service for Quebec, Ontario and Atlantic Canada, and the other an English-language service for British Columbia and the Yukon. As well, the Commission said it would consider means to provide pay TV to other parts of the country, including the extension

of the regional services licensed in the decision. (CRTC, 1982: 13) The Commission also expressed an interest in the introduction of more specialty services, if they were innovative and would not jeopardize the program funding abilities of existing licensees. (CRTC, 1982: 7).

The reason pay services were licensed, even though none of the applicants met the CRTC's objectives, was due to the pressure on the Commission from the cable industry, in particular. It was largely expected by Canadian broadcasting interests that pay services were going to be licensed after the hearings. Therefore, if any applicant came reasonably close to meeting the Commission's objectives, it would be licensed. The CRTC felt obligated to proceed with any workable proposal. (Saunderson, 1984)

Pay television services were introduced to most Canadians on February 1, 1983, when the licensees began their programming schedules.

When the history of Canada's pay television policy is reviewed, some of the drawbacks to the regulatory agency's role in the policy-making process mentioned in the previous chapter become apparent. For instance, the lobbying for concessions by powerful interest groups, either directly or through the federal government, resulted in the

Commission being pushed in policy directions it did not originally wish to go. Also, the pressure of interest groups may have been the reason the Commission did not implement a more innovative system which may be more advantageous to the Canadian production industry. Further elaboration of these points will be supplied in the following three chapters.

CHAPTER III

CANADA'S PAY TV STRUCTURE AND ITS ALTERNATIVES

An examination of the policy process leading to the introduction of pay television in Canada leads to several questions about the effectiveness of the CRTC's policies: both in terms of the March 1982 Decision's appropriateness, to the objectives stated in the Broadcasting Act and past pronouncements of the Commission on pay TV, and in terms of its ability to create a pay TV environment that would allow the networks to acquire sufficient revenues from their operations to be channelled into the independent Canadian broadcasting industry.

In order for pay TV to provide a spur to the Canadian production industry, it must generate enough revenue to invest back into Canadian programming. This fact leads to

the question of whether the Commission's decision to license a competitive pay-per-channel system was the best way to ensure a profitable Canadian pay television industry which could invest capital into Canadian productions.

The system of pay TV which the Commission introduced to Canada was based on the pay-per-channel method of distribution and exhibition. The competing channels featured a menu of programs composed primarily of feature films. A person who subscribed to any such channel had to pay a single charge per month to view the schedule of programming on that channel. Every subscriber to a particular channel received access to the same programs, and paid the same fee no matter how much or how little he watched the channel. In Canada each competing pay network charged the same fee of \$15.95 per month to its subscribers. Each service was delivered to its subscribers via a cable converter. A converter is a device which allows its owners to receive many additional channels not offered by the basic cable service.

The questions to be explored in this chapter deal with why the CRTC chose this structure for Canadian pay television. They include:

- 1) Why did the Commission not choose another method of exhibition instead of pay-per-channel, such as pay-per-program or a universal service?

2) Why, if the pay industry was to be based on competition, were all the networks charging the same fee per month? Is not competitive pricing essential to a truly competitive system? Also, is a competitive scenario suitable in a market of a rather limited size?

3) Why did the Commission choose the method of delivery to be via cable converter when the majority of Canadians do not own this device and the CRTC and the federal government (Sauve, 1976: 7) had previously expressed the desire to make pay TV available to all Canadians? What were the other methods of delivery which could have been used, and why did they not receive more consideration?

4) Why did the CRTC not encourage preliminary testing of the effects of pay TV on particular market areas in Canada, when it had earlier indicated (1978: 53) a desire to conduct these pre-tests?

ALTERNATIVE METHODS OF EXHIBITION

Before examining the first question, it is best to reiterate the definitions of the alternative methods of exhibition to pay-per-channel, as outlined in the introduction. Pay-per-program is a method which may utilize a multi-

tude of channels. Each channel offers a different program with a particular charge to watch that program. If a subscriber is interested, he pays the charge to watch the program. If he is not interested, he does not have to pay.

The method of monitoring what programs are watched by each subscriber is chosen by the exhibitor and distributor.

The universal service is a single channel of diverse programming offered on the basic cable service. All cable subscribers must receive the channel, and the bill they pay for the cable service will be raised by two dollars a month to pay for the new channel.

The pros and cons of these two alternative methods of exhibition will be analyzed one at a time as to their potential viability in a Canadian pay TV market, and how each compares to the pay-per-channel method. Pay-per-program will be looked at first.

PAY-PER-PROGRAM VS. PAY-PER-CHANNEL

Pay-per-program offers a much wider diversity of choice and interest than does pay-per-channel because it does not have the constraints of limited prime time on a single channel and the need to please everyone with a sing-

le menu of offerings. (Edmunds, 1976: 16) With pay-per-program, a program, or title, is played continuously on one channel for a few days. This gives most subscribers who are interested in the title a chance to watch it at a convenient time for them. So, the problem of scheduling which plagues pay-per-channel is solved by pay-per-program. As well, this method brings fewer complaints about programs being repeated than does pay-per-channel because people know there will be a different title every few days and they do not have to pay for it if they do not want to watch it.

Also, pay-per-program needs to acquire fewer titles than pay-per-channel. Presently, Canada's movie channels play 60 to 120 titles a month, averaging four or five repeats per title, with widespread subscriber complaints about those repeats. But, with pay-per-program each channel will only require two titles per week, if it plays each for $3\frac{1}{2}$ days. Using five channels requires 10 titles a week, or 40 a month. That is $\frac{1}{3}$ to one-third the title requirements for the pay-per-channel service. Yet, it brings fewer complaints about repeats. (CCTV, Alberta, 1984: 10) This means less money has to be spent on purchasing titles, thereby reducing the costs of operating the service.

However, the main argument against pay-per-program is the necessity of making a greater capital investment in

hardware with money that could be available for purchasing programs. Also, opponents of this method claim the technology necessary to maintain it is not operational. (Edmunds, 1976: 16)

But, there were three operational in-home pay-per-program services available in North America. One was in Toronto (Network I) which operated on a closed-circuit basis with its own automatic return feed that informed a computer which programs were being watched by whom. Although it was experimental and immature, it had a high consumer usage level from its subscribers. (CRTC, 1978: 12) The other two systems were operating in the U.S.: one was a mature profit-making venture in Columbus, Ohio with 4,300 subscribers and the other was an experimental system in Allentown, Pennsylvania with 1,300 pay terminals.

In Allentown the subscriber received a program guide, checked off the programs he wanted to watch, calculated the amount owing, and then mailed his request and his cheque to the company. The computer was then programmed to unscramble the subscriber's terminal at the appropriate time. A person could also buy on impulse by calling the company and asking it to unscramble his terminal for a particular program. He would then be billed an extra 50¢. (CRTC, 1978: 12) This method of metering program viewing

was inconvenient for the subscriber because he would have to pay for a program in advance though he may not be sure that he will be able to watch that program. As for impulse-buying, the subscriber was inconvenienced by having to make a phone call to tell someone what program he would be watching, even though he may not want other people to know what program he is watching because it is an imposition on his privacy.

In Columbus, the Telecinema system indicated that the technical sophistication of the pay-per-program method is not too great to operationalize. A computer monitors each subscriber every five minutes to note what programs are being watched. The company claimed to finance fully the computer, adaptation of the cable system, servicing and selling of the terminal, and building of the terminal boxes on a \$38.50 installation deposit and a service charge of \$3.00 per month per terminal. (CRTC, 1978: 12) But the problem this system had was a lack of security. In other words, some people were able to watch the programs for free. This was the reason Telecinema failed.

But one interesting point about Telecinema is that it indicated a trend where less than blockbuster feature films attracted significant viewership results. This bodes well for Canadian feature productions. (Edmunds, 1976: 16)

A Canadian film which has only been moderately successful at the theatre box office will do much better on a pay-per-program service because when a film is on this service the expenditure of funds and effort to watch it are not as great as they are to go to a movie theatre. Therefore, a customer is more willing to gamble on a pay TV movie than a theatrical film. People usually only go to see blockbusters at a theatre. (CRTC, 1976: 37)

Since the pay-per-program method would have multiple channels, one of its titles could be bought by a total of only 2 or 3 per cent of subscribers in all, but, through its many exposures could pay its way for the pay TV operator. (Edmunds, 1976: 16) This is so because the operator does not have the fixed cost of programs to purchase. Instead, he pays a portion of the gross box office receipts to the producer and whoever else receives a share of the revenue. Plus, he can offer all types of programming and still be economically viable because he is just proliferating the use of channels.. (CCFM, 1976: 3) This means the distributors could offer more Canadian content without losing money.

Pay-per-program is dynamic in that it contains economic reasons for Canadian productions to grow in strength, rather than relying on regulatory procedures. If a Canad-

ian production attracts a fair-sized audience at the outset, it can be successful and well-rewarded financially. (CRTC, 1978: 9) The more Canadian a production is, in terms of actors, writers, director, production values, etc., the greater is the percentage of the ticket price paid by the consumer going to the producer. (CRTC, 1978: 5)

Pay-per-program also would give Canadian producers a ready access to the system, a new and better market for their products, and new opportunities for innovative programming. It would encourage greater variety and quality because programming would be geared to the tastes of minorities willing to pay. (CRTC, 1978: 9)

The Clyne Committee (1979: 49) recommended a pay-per-program system for Canada because it would provide a new broadcast outlet for independent Canadian producers which would bring a competitive stimulus and opportunities for new ideas. This would result in high-quality productions that would most likely foster a Canadian cultural identity.

Both the quantity of resources devoted to programming in the pay-per-program method, and the relative profitability of different programs will depend upon the intensity of viewer preferences as expressed by the amount viewers are willing to pay. Competition for viewers and the

promise of increased revenue per viewer would almost certainly bid up the production costs (Owen, 1974: 129) for the made-for-pay programs which would be almost all Canadian.

Some programming will be popular in one region of Canada and unpopular in another, but since pay-per-program allows the marketplace to determine what programs are offered on the service, a program will only be shown where there is a market for it. This regional selectivity allows a pay-per-program service to avoid the inherent problem of separate English and French services which are necessary in the per-channel method. (CRTC, 1978: 46)

Despite these advantages, one factor that might have made the pay-per-program method an unattractive alternative in the CRTC's view, is that the local cablevision system would be leasing channels in the manner of a common carrier if this method was adopted. Therefore, the cable companies would be incapable of extending their "natural" monopoly of transmission backward into an "unnatural" control of program selection or production. Instead, there would be competing suppliers of programming each using the cable system in a way a magazine or book publisher uses the postal service. Cable would merely serve as a conduit for an assortment of diverse programming, some highly special-

ized, some of mass appeal. (Owen, 1974: 147) This secondary status and minimal revenue share was definitely not the role the powerful cable industry lobby had in mind for itself in the Canadian pay TV structure. So, the CRTC probably considered the pay-per-program option politically unfeasible due to its unpopularity with such an influential interest group.

Originally, the CRTC and the federal government had expressed a preference for the pay-per-program method. For instance, the federal Minister of Communications Jeanne Sauve, said in her 1976 speech that a pay-per-program system would achieve a greater variety and quality of programming because it was geared to the tastes and interests of those willing to pay for quality. (Sauve, 1976: 6) This statement can be described as an interpretation of subsection (d) of section 3 of the Broadcasting Act which includes the phrase "programming . . . should be varied and comprehensive." Sauve (1976: 6) went on to say that the pay-per-channel method was likely to encourage programming for the lowest common denominator. This development would not be in accord with section 3 (d) of the Broadcasting Act.

Besides Sauve, the CRTC was also receiving encouragement to opt for a pay-per-program method of exhibition from most of the interests that they received submissions

from in 1976 and 1977. (CRTC, 1978: 32) The CBC (1976: III-4) felt pay-per-program would not cause conventional broadcasters to lose as much of their audience as pay-per-channel would. It believed the decision to pay for and watch a particular movie or sports event is more likely to be akin to a decision to attend such presentations outside the home.

However, after receiving this input, the Commission decided in 1978 that a pay-per-channel method should be used originally, but it would be necessary to design the exhibition system so that a transition could be affected toward a pay-per-program system as the technology available to pay television developed and matured. (CRTC, 1978: 47)

The problem with this plan is that there is no evidence that a method can be adopted and then altered or replaced afterward to suit the purposes of regulatory bodies. A structure usually becomes institutionalized and the costs that were involved become a problem -- too obsolete and so on. (CCFM, 1976: 8) As well, the initial organizational and ownership patterns could heavily influence the formation of the pay structure in the future. (CBL, Sept. 1976: 108)

However, this is likely the Commission's intention because the relevant private sector interests in Canada

favour pay-per-channel. The reasons given by these powerful lobbyists for their preference are:

1) pay-per-channel is more likely to develop and entrench the pay TV concept than is pay-per-program because the risks of disaffection increase with the number of times a consumer has to reconsider his pay TV investment, and they say pay-per-channel minimizes the number of such decisions; 2) the extra cost of hardware for the pay-per-program system makes it uneconomical. (CBC, 1976: III-5) The cable companies, for instance, felt that a pay-per-program system might entail relatively more extensive and costly modifications of their plant and billing procedures than was necessary for a pay-per-channel system. (Clyne, 1979: 48).

The validity of the first reason is open to question because a pay channel has to please all its subscribers with programming suitable to various people. But pay-per-program, as mentioned before, can afford to appeal to many different interests. Pay-per-program only asks its subscribers to pay for what they want, so there is likely to be little dissatisfaction as compared to pay-per-channel where a set fee is charged and the subscriber must feel he is getting his money's worth, or he will not subscribe.

But, the second reason is a legitimate concern.

The cost of the hardware necessary to operate a per-program

system, while maintaining an effective method of metering subscriber usage and preventing access to the programs by non-subscribers, is too great at the present time for a per-program system to be successful. Though the costs for program acquisition may be less in a per-program system as CCTV suggested above, the cost of the necessary hardware would still make per-program too expensive.

Overall, the pay-per-program method of exhibition seems to have greater potential for the pay cable concept than pay-per-channel. The increased potential lies in the ability of a pay-per-program approach to satisfy alternative viewer preferences in a way pay-per-channel can never hope to achieve. The inherent problems of the pay-per-channel method were already apparent in the U.S. before the CRTC's pay licensing hearings in 1981. The inability to split a pay-per-channel service into program elements of a widely varying nature frustrates audiences and lowers overall product attractiveness. Pay-per-program would resolve this and allow for the exploitation of minority tastes and ethnic and specialized audiences on an "immensely profitable" scale. In addition, the potential of this method of exhibition for marketing special events is considered by experts to be "enormous". (CRTC, 1978: 25) However, the technical costs of a per-program system were too great when

Decision 32-240 was published and are still too great today. If per-program becomes more economical in the future, hopefully the Canadian pay TV system can make the switch from per-channel to per-program, but as was mentioned above, there is no evidence that such a switch can be made.

UNIVERSAL SERVICE VS. DISCRETIONARY

There is one thing that the supporters of pay-per-channel and the supporters of pay-per-program agree upon and that is the need for pay TV to be accountable to consumer choice. They hold that discretionary services, by their very nature, are more motivated to offer attractive programming packages for which viewers would be ready to pay.

Greater diversity and quality of programming would be encouraged in response to viewer demand. They claim that a universal method of exhibition would be insensitive to market realities because it would be imposed on cablevision subscribers. (CRTC, 1982: 5)

But proponents of a universal service believe its guaranteed revenues would result in secure and substantial cash flows to the production sector in Canada and result in higher quality programming and a greater proportion of Can-

adian content than the discretionary services could provide. A key advantage of a universal service would be its ability to distribute experimental, high-quality Canadian programs which would rarely be shown by a pay-per-channel service because of its need to develop and maintain mass audiences. (CRTC, 1982: 6)

The Commission found the pro-universal arguments put forward at the licensing hearings to be persuasive. They felt that such a service held the promise of being uniquely Canadian in content and character, while at the same time being available at a reasonably low cost. As well, it would better respond to a balance of economic, social and cultural incentives than a discretionary service, especially if it were operated on a non-profit basis. As a result, the CRTC envisioned a future scenario where a universal service would be licensed along with the discretionary services. The Canadian programming on the universal service would supplement the programming provided by the discretionary services. (CRTC, 1982: 14).

Since the universal service would be able to derive revenues from all cable subscribers in Canada, it would have enormous financial resources to draw upon to produce Canadian programming. As well, it would not have to worry about costs for marketing itself, because it is a compulsory

service. (CRTC, 1982: 70) Therefore, the money saved would also go toward Canadian productions.

A universal service would create a strong Canadian alternative to U.S. programming and lessen the threat of more American content on the discretionary services, thus preserving cultural integrity. Programming on the service would be mostly Canadian — either purchased in final form or commissioned as made-for-pay TV features. (CRTC, 1978: 6) Also, American pay services are "desperate" for made-for-pay TV productions, so this market would help these Canadian projects be even more profitable. (CRTC, 1978: 16)

Although a universal pay service is the quickest way to encourage the Canadian independent production industry, which was a major goal of the CRTC going into the pay TV licensing hearings, the Commission decided to put off the creation of a universal service until a later undisclosed time. The apparent reason for their delay in taking action was due to the concept of a mandatory pay system. As expressed by Gagnon and Grace in their dissenting opinion to Decision 82-240 (CRTC, 1982: 63), a universal service raises the question of whether Canadians should be required to pay for programs they do not want just because they want a basic cable service. Many commentators

in the Canadian media, interest groups, and politicians would construe a mandatory pay system as a constraint on the individual's right to only pay for a non-commercial station if he wants one. For this reason a good deal of political pressure on the federal government would arise if the CRTC licensed a universal service.

Of course, this argument is only a "knee-jerk" reaction to anything that vaguely sounds as if it opposes the individual's freedom to choose. A person who wants the basic cable service only receives the channels the local cable operator decides to provide. The subscriber has no choice over which channels are carried. Also, the cable operator can apply to the CRTC to raise the monthly service fee and if he receives approval, the subscriber has to either accept the increase or cancel his subscription. So, the addition of a high-quality, commercial-free channel with a modest increase in the monthly service fee would not be an unreasonable action compared to the standard operations of a cablevision service. As well, the CBC is a broadcast service paid for by Canadians whether they want it or not, so this fact is another precedent supporting the creation of a universal pay TV service.

However, there is another concern about a mandatory pay channel included on the basic cable service. Univers-

ality means that households will be exposed to forms of programming which might be considered undesirable to some home environments. This makes consideration of censorship necessary. (CRTC, 1978: 18) But, part of the attraction of pay TV is the absence of censorship. If the pay channel were censored, it would be much like a Canadian version of the U.S. Public Broadcasting Stations. It would not be able to present popular R-rated movies, thus, not providing the entertainment expected of a pay channel. This would be another problem for the CRTC and the federal government to wrestle with.

A further problem with a universal pay service is that it may cause a fair amount of cable subscribers to cancel their subscriptions due to the extra cost, since they can identify the reason for the cost increase and may resent the addition of the mandatory channel, or a decision about censorship which they feel is not sufficient to meet their concerns. The question of cancelled subscriptions was pointed out in a December 1977 "CROP" survey which included a question to cable subscribers on whether they would continue to subscribe if a new channel costing \$2.50 per month extra on their cablevision bill was added. Only 51% of the respondents said they would keep the service and pay the extra cost. (CROP, 1978: 10) While it must be consid-

ered that Canadians' familiarity with the notion of pay TV in 1977 was very limited and that the fee quoted in the question is 50¢ per month greater than the fee proposed at the 1981 licensing hearings, the question was straightforward enough and the response to a mandatory pay channel so lukewarm that it had to give the CRTC pause for consideration.

While a mandatory channel could well reduce cable subscribers, a discretionary service would attract people who are interested in pay TV to subscribe to cable, but not cause people who were not interested in pay TV to cancel their cable subscription. Obviously, for this reason the cable industry would prefer a discretionary pay service, so the influential power of the industry likely swayed the Commission toward choosing a discretionary service.

The CROP survey was also used by the Commission to help evaluate the potential of pay-per-program and pay-per-channel services. The survey revealed a slight preference among the respondents to a per-channel system (35%) compared to 31% for per-program and 12% for universal. The remaining 22% of respondents stated no preference. But, because the sampling range of the survey was 4 per cent, the difference between the preference for per-channel and per-program was not significant. As well, among cable sub-

scribers, the more educated and higher income groups had a greater tendency to favour per-program. Of the highest income group 43% favoured per-program compared to 32% of the \$12,000 to \$18,000 per year group, 23% of the \$6,000 to \$12,000 group, and 16% of the under \$6,000 group. Of the respondents with a college education 42% favoured per-program compared with 35% of the high-school educated and 23% of the grade school educated. Since the demographics of pay TV subscribers in the U.S. indicate that pay TV is more likely to be purchased by people who are up-scale in income and education, the per-program option would seem to offer more potential for success, if the American results can be applied to Canada. (CROP, 1973: 9)

One more survey result of interest to this thesis revealed that 14% of all respondents said they would likely subscribe to a per-program service, compared to 11% who said they would likely subscribe to a per-channel service. When only present cable subscribers are considered, there are 18% who would likely purchase a per-program system and 14% who would likely purchase a per-channel. (CROP, 1973: 15) These results did not reflect a significant preference for one discretionary service over the other, but as was mentioned above, the Canadian public knew very little about pay TV when the survey was conducted. They likely did not

understand the greater diversity of programming that a per-program system would offer, or else they would have shown a greater interest in it.

If there is a system with great diversity and specialization of services, then the potential demand for any one program will be from a relatively small and homogenous group of consumers. The prices charged for such a service spectrum, taken together, will be in effect a close approximation to perfect price discrimination, i.e. each consumer paying a price equal to the true value of the good. (Owen, 1974: 80) The per-channel system in Canada now has some diversity with different channels each devoted entirely to a particular type of entertainment or information, but only per-program could offer a scenario where many program producers could have unrestricted access to many channels, with each producer able to charge viewers directly for his program. The attraction of this system is that it will provide an economic incentive for producers to create programs for small groups of viewers who have strong interests in specialized programs. (Owen, 1974: 81)

From a review of the literature, the per-program option seems to offer the best long-range chance of success for Canadian pay television because it offers the most to the viewer, in terms of entertainment value for his money.

But, because of the operating costs of the per-program method it cannot be profitable at the present time, so it will not generate the revenue that the Canadian independent production industry needs now. The universal option offers the quickest way to acquire significant revenue for Canadian productions, but because it is not discretionary, and it raises problems to do with censorship, the universal method of exhibition was not acceptable to the CRTC. The per-channel option lacks the variety of per-program and the quick revenue of universal, yet it was the system chosen by the Commission. The reasons it was chosen were the pressure exerted by the Canadian cable industry, mentioned above, and because the per-program method was too expensive. So the Commission had to settle for the per-channel method.

A COMPETITIVE SCENARIO VS. A NATIONAL MONOPOLY

The second question to be examined in this chapter is why after choosing a pay-per-channel method of exhibition, did the CRTC decide to license several pay channels to compete with each other. The Commission licensed six pay services (two national and four regional) and called for two more regionals in Decision 82-240. Gagnon and Grace

(CRTC, 1982: 70) said that in a short time the Canadian market was transformed from one with no pay TV to one with a system overload. In almost every region of Canada there were three pay networks competing for viewers.

The licensing of competing channels did not fit with the proposed policies of the CRTC (1978: 39) in the past. At that time, the Commission felt a national monopoly service was preferable. Another alternative it foresaw would have pay networks set up in different regions of Canada with each having a monopoly in its own area. Whichever of the two options the Commission chose, there would not be competition between networks. However, instead of making a choice it licensed a national network and regional networks as well. This action made the Canadian pay TV system competitive.

Among the submissions the CRTC received in the years prior to Decision 82-240, many of them urged that Canada adopt a single national pay TV network. The Canadian Cable Television Association (CCTA) believed (1976: 14) that a single national channel with broad entertainment appeal was the only viable pay TV service to start with in Canada. It felt that other specialty channels could be added later, after pay television was established in Canada, to attract discriminating minorities with particular program needs.

The CRTC was in agreement with the CCTA when it stated (1978: 14) that the size of the potential Canadian pay cable market is only a fraction of the size of the U.S. market so free-market developments in pay cable network marketing that have occurred in the U.S. are unlikely to be appropriate in the Canadian context. Put simply, the Canadian market is not large enough to permit competitive pay cable networking. Therefore, pay network planning in Canada must be done on a comprehensive, coordinated basis, presumably under the auspices of a single network which can analyze alternatives and decide on appropriate distribution methods within a national frame of reference.

At the licensing hearing of 1981, a number of representations suggested that a monopoly pay service would have more funds available for Canadian productions because it would not have to bid with competing services for foreign programs thereby driving up the price. (CRTC, 1982: 4) Also, with more than one licensee per region, the competing networks have to increase their marketing budgets to attract potential viewers to their service instead of the competing ones, and they have to share the market thereby reducing the subscriber base and further limiting the funds to finance new Canadian productions. (Lyman, 1983: 81)

Lending support to this argument was First Choice's

calculation in its 1981 application for a pay-TV licence, that its average programming expenditure on a per-hour basis would drop from \$330,000 to \$120,000 if a competing service was licensed. Similarly, payments by First Choice for Canadian feature films would drop from an average of \$500,000 to \$190,000. Since it is generally accepted that \$350,000 must be spent to provide an adequate hour of drama, a competitive pay TV system would have a very negative effect on Canadian productions. (Audley, 1983: 284)

The alternative to a national monopoly which would still be non-competitive was the regional network approach. Advocates of this approach at the 1981 hearing argued that licensing a system of regional services would best accommodate the distinct social and cultural characteristics of the different regions of the country and provide more opportunity and sources of revenue outside of central Canada. They suggested that some inefficiencies inherent in operating on a regional basis could be offset by the development of programming exchanges and co-production arrangements among regional services. (CRTC, 1982: 7)

Supporters of the regional approach felt that if Canadian unity and identity were to be fostered by pay TV, regional cultural interests would have to be represented. Therefore, there should be regional production facilities

as a means of sharing the culture of the different regions with each other, and to the overall promotion of Canadian content. Each pay network licensed would be authorized to serve a specific region without competition, at first, thereby spreading to production companies across Canada the opportunity to develop programming for pay. (Martin, 1976: 42)

After considering the arguments for a national pay service and regional pay services, the Commission came to the conclusion that a national general interest pay service was essential to provide a strong national dimension for pay TV in Canada. But, at the same time, it considered regional general interest services necessary to provide new opportunities for regional expression by stimulating creative talent and utilizing production facilities in communities across the country. (CRTC, 1982: 11)

Faced with a decision between two systems each of which appeared attractive, the Commission found a way out by opting for a competitive system offering a national network and regional networks. In justifying a competitive pay TV market in Canada the CRTC cited briefs it received which suggested that a single buyer would wield an undue advantage over Canadian, as well as foreign producers. In addition, competitive market incentives would ensure great-

er quality and diversity of programming, a heightened sensitivity to consumer tastes, increased funding for the Canadian production industry and more outlets for artistic expression. (CRTC, 1982: 5)

The Commission (1982: 12) felt that while the revenues of any one licensee would be lower in a competitive environment, the overall revenue available for funding pay TV programming would be higher due to increased market penetration. As well, a competitive market structure would foster a dynamic industry with built-in incentives to realize the goal of diversity of programming, and create multiple opportunities for Canadian program production. Therefore, little regulation would be necessary to ensure accountability and achieve the Commission's goals for pay TV. In comparison, a monopoly service would require an additional degree of regulatory supervision to achieve those goals and ensure accountability. (CRTC, 1982: 19)

It is difficult to understand the Commission's faith in a competitive market somehow being able to force the pay TV networks to offer an adequate amount of high-quality Canadian content, especially when so much more money has to be spent on marketing and purchasing foreign-produced "blockbusters" to attract subscribers to one of the competing services. Also, their belief that competing

services will bring more programming diversity, without price competition is unfounded. If prices are fixed — as they were in Canada, with \$15.95 per month being charged for each general interest service — program duplication will be prevalent. But if there is price competition, it would render product duplication and imitation potentially unprofitable. To illustrate this point, if broadcaster A purchases program C at a cost of \$400 and sells it to 10,000 viewers at 10¢ each, his profit is \$600. However, if broadcaster B considers duplicating program C at a cost of \$400 and splitting the audience at 10¢ each, thereby earning a profit of \$100, he will reduce A's profit to \$100. A, in turn, will carry out price cuts to deter B from entering his market. The price competition from A will then make B much less enthusiastic about duplicating program C. (Owen, 1974: 82)

The CRTC tried to deflect criticism of their competitive pay TV model by saying that the regionals and the national network would augment each other, cooperating in concept development, co-productions, and program exchange arrangements. (CRTC, 1982: 38) The Commission stated that it

. . . is confident that regional productions of such marketable quality, utilizing regional artistic resources and produced in the different

regions of Canada, will expand and take their rightful place in the spectrum of pay television service.

If felt that the regionals and First Choice would be helping each other to a certain extent, rather than competing directly.

However, for the regionals to survive First Choice would have to provide most of the funding for the regional productions, simply because the regionals cannot afford to produce programs comparable to national network programming due to the fact that the national network has a much larger audience over which to spread its costs. (Owen, 1974: 19) First Choice did not want to cooperate to such an extent, so the regionals had to join together to form what amounted to a second national pay channel in competition with First Choice.

THE EVOLUTION OF THE REGIONALS INTO A NATIONAL NETWORK

Gagnon and Grace, in their minority opinion on Decision 82-240, foresaw the quick evolution of the regional systems into another national network. They also observed that the regionals did not have the more onerous

marketing and bilingual programming requirements which the national licensee must support. (CRTC, 1982: 71) Therefore, First Choice was put at a disadvantage when the regionals came into direct competition with it.

The regionals were formed into a second national network through a series of steps beginning in July 1983 when Allarcom, Alberta's regional network already affiliated with the regional in Ontario, was authorized by the Commission to provide a general interest service to Manitoba, Saskatchewan and the Northwest Territories. Allarcom was allowed to broadcast into the three other regions by means of an amendment to its original licence. An Order-in-Council referred this decision back to the CRTC for reconsideration and hearing on the grounds that the amendment may have placed Allarcom in an enhanced position to what was originally intended in Decision 82-240. The federal cabinet felt Allarcom had become a direct competitor to First Choice without being subject to comparable requirements, particularly the requirement to provide a national French-language service. The Order-in-Council also questioned whether the respective roles and obligations of the regional licensee and the national licensee were still relevant in light of the apparent evolution of the overall market structure of the Canadian pay TV system. (CRTC, Jan.

1984: II-2)

However, the Commission decided unanimously that approval of the proposed extension of Allarcom's service was acceptable and in accord with the objectives, structure and regulatory framework of Decision 82-240. It justified the extension of service by pointing to the phrase in Decision 82-240 which said the regulatory approach to pay TV would be "free from all but essential constraints . . . that will permit pay television networks maximum flexibility to innovate and experiment." (CRTC, Jan. 1984: II-7)

At the same November 1983 public hearing which granted Allarcom the right to extend its service to Manitoba, Saskatchewan and the Northwest Territories, the effective control of the British Columbia and Yukon regional service, "Aim", was also transferred to Allarcom. Aim had been granted its licence to serve B.C. and the Yukon on February 21, 1983. However, it was soon plagued by legal and financial difficulties which the Commission felt would be solved by the support and expertise provided to Aim by Allarcom. (CRTC, Jan. 1984: III-5)

Also, late in 1983 "StarChannel", the Atlantic regional service, went into receivership only to be replaced in the Atlantic market by Ontario's pay TV network "Superchannel". (CRTC, Jan. 1984: I-15) Since Superchannel and

Allarcom are essentially the same company because a substantial amount of Superchannel's shares are owned by Allarcom shareholders, the licensing decisions listed above made Superchannel/Allarcom into a second national pay TV network. It was offering services to nine provinces and two territories. The CRTC's hopes for a national licensee and regional licensees existing side-by-side had turned into a highly competitive situation where two national networks offering similar programming were struggling with each other to attract the most viewers. That competitive scenario was one the Canadian pay TV market was not large enough to handle.

THE MERGER OF FIRST CHOICE AND SUPERCHANNEL

As a result of the heavy costs of head-to-head competition, First Choice and Superchannel approached the CRTC with the idea that they create two monopolies. First Choice would service the six eastern provinces, and Superchannel would service the four western provinces and the two territories. In response, the Commission called for a public hearing to examine changes to the competitive structure of pay TV. (Boyle, 1984: 12)

The reality of pay TV in Canada, 18 months after it

was started, was that less than half a million cable subscribers subscribed to pay TV. The licensees had expected to have well over one million of five million cable homes subscribing to at least one of their services by that time. The licensees felt that a merger of their two services to eliminate competition would rectify many of their problems. (Boyle, 1984: 12)

Some of the benefits that a merger would bring were outlined by the applicants (licensees) at the public hearing. (CRTC, July 1984) These include:

- 1) two networks working together can spend more on encouraging Canadian productions;
- 2) a merger would mean more and better Canadian content and less repetition of programming;
- 3) one pay TV service could employ a lifestyle marketing campaign, instead of the negative marketing necessary due to competition for a share of the market;
- 4) the existence of one western service and one eastern service will allow programming schedules which suit particular tastes in the west, and programming which suits eastern tastes;
- 5) without competition between the two pay services, a situation where two distinctive services must each negotiate with the cable operators to be included in a pay channel

package with the specialty pay services introduced in September 1984* will be avoided; and

6) having one monopoly pay service gives the potential subscriber one less decision to make: he only needs to decide whether or not he wants to receive pay TV, he does not have to pick which movie channel he wants.

An applicant stated (CRTC, July 1984 Public Hearing) that the elimination of competition between pay services in Minnesota actually increased the overall pay TV penetration rate in the market; presumably because there were less decisions to make before purchasing a pay service. The applicants described a merger as a rebirth for the Canadian pay TV industry.

First Choice and Superchannel were seen as confusingly duplicative of each other which prevented the possibility of multi-channel pay subscribers foreseen by the Commission in Decision 82-240. It was very difficult for the cable operators to divide their time between First Choice

*The Commission stated in October 1983, that the cable carriage of certain specialty services would be allowed, provided they "contribute to, and not adversely affect, the development of the Canadian broadcasting system." Their sole aim would be to enhance the pay service. (CRTC, Aug. 1984: 15) The CRTC eventually licensed a sports network (TSN), and a music video service (MuchMusic), while also allowing several U.S. specialty services to be carried by the individual cable companies at their discretion. Cable companies could provide as many of the CRTC approved services as they wanted.

and Superchannel. They had to advertise each network for about two months at a time saying they were great and telling the customer the same thing about each. (Cloutier, 1985) As a result of the confusion, the subscriber numbers were insufficient to support one network, let alone both, during the first 18 months of the pay network's operations. The levelling off of subscriber growth was cited as a critical reason why the merger was essential. In August 1983, a typical subscriber took 1.6 pay services, but by the summer of 1984 he was down to 1.1. (CRTC, July 1984: 44) The situation was summarized by Commission Chairman, Andre Bureau, who said (CRTC, July 1984: 1) "Most of those present will readily agree that the pay TV universe in Canada has not unfolded as it was expected to at the time of the original decision."

Regarding point 2 in the applicants' presentation which stated that a merger would reduce the number of repeat showings, Phillip Lind, Senior vice-president of Rogers Cablesystems Inc., said the number one complaint his cable company received from pay subscribers was about repeats. He said, "Subscribers expect a varied service and feel they're being gyped by repeats." (Boyle, 1984: 12) Overexposure of Canadian-made films is a root cause of the excessive repetition. Canadian programming must make up 30%

of the total air time. To meet the quota, pay licensees had to air mediocre films -- some as often as 40 times a month? (Boyle, 1984: 13)

The applicants believed a merger would allow them to deal with this problem by working closely together on major Canadian programming projects. The combined service could offer a greater proportion of Canadian content which is of a high quality, because it would be integrating the best of the available programming. (CRTC, July 1984: 41)

As well, when First Choice/Superchannel becomes financially able to invest in Canadian productions, they will have more revenue to invest because the networks will be working together on the joint buying of foreign productions, thereby reducing the price due to the absence of competition between buyers. Also, the necessity of marketing their services, which took up more than 45% of their combined gross revenue, against one another will no longer exist so a substantial amount of their revenue can be redirected to Canadian productions. (CRTC, July 1984: 45)

At the hearing (CRTC, July 1984), Lawson Hunter, the Director of Investigations and Research at Consumer and Corporate Affairs Canada, made an intervention against the First Choice/Superchannel application. He said a merger was premature. There are other possible solutions which

would still allow a competitive market, which benefits consumers. He proposed that the time quotas for Canadian content be reduced from 30% to 15%. In addition, the required proportion of gross revenues to be devoted to the purchase of Canadian content should be reduced from 60% to 40%. His department estimated that this would reduce the licensees' budgets by \$9 million per year. This compares favourably to the \$6 million per year which the applicants said would be saved by a merger. Hunter said that Canadian content time quotas force a substantial block of costs which do not result in the attraction of an intended audience which brings in new revenue. As well, Canadian productions already finished and "on the shelf" of distributors are overpriced because the distributors know how much the pay licensees require Canadian productions. The high prices drain revenue from the licensees which could have been invested later in new Canadian productions. Hunter said there is not a sufficient amount of Canadian dramatic productions coming onto the market to fill the void caused by the rapidly dissipating shelf product. If the content rules were reduced for the early years of Canadian pay TV, there would be more money available to put into Canadian productions to come on stream later on. At that time, Canadian content quotas would be raised. (CRTC, July 1984: 178)

However, this alternative was not a politically viable solution. One of the main reasons used to justify the introduction of pay TV in Canada was that it would quickly increase the amount of Canadian content on television. So, if the CRTC decided to drastically cut the Canadian content requirements, many Canadians would interpret this action as proof that the CRTC has little interest in encouraging Canadian productions because it is more interested in broadcasters' profits than in Canadian culture.

Hunter concluded his department's argument by stating that the lack of competitive market pressures prevent maximum change and innovation, technological or otherwise, in an industry. He said competition is the best incentive to ensure continued innovation in Canadian pay television. (CRTC, July 1984: 191)

However, First Choice/Superchannel pointed out that if the two networks merge, their channel will still be competing with the new specialty pay services, as well as video cassette and satellite distribution systems. Therefore, the merger will not put an end to the competitive market, and innovation in the pay TV industry will still be necessary to keep pay TV as a viable entertainment alternative. (CRTC, July 1984: 311)

The Commission agreed with First Choice/Superchan-

nel's argument that a competitive market will still exist after a merger (CRTC, Aug. 1984: 11) when it published Decision 84-654 pertaining to the reorganization of English language pay services. The Commission went on to say (Aug. 1984: 11) that their belief at the time of Decision 82-240 that competing pay TV services would increase market penetration and the revenues available for Canadian productions, was an expectation that had not been realized. In fact, by April 1984 it was apparent that pay TV subscription levels had entered a no growth period at a time when the licensees were continuing to sustain substantial operating losses. (CRTC, Aug. 1984: 5)

After considering all the evidence which pointed out the difficulties for Canadian pay TV in a competitive market, the Commission had to admit it was mistaken during the 1981 public hearing to award pay TV licences when it considered that a general framework based on a competitive market structure would create new opportunities for regional expression, and enhance diversity and new opportunities for consumer choice. Therefore, they decided to approve the merger of First Choice and Superchannel and put aside the idea of direct competition between general interest pay licensees. (CRTC, Aug. 1984: 3)

The CRTC had to accept a merger of the two general

interest pay services because the Canadian pay TV industry was in serious difficulty* partly due to the Commission's poorly defined attitude during the licensing hearings in 1981. The Commission apparently had no set policy for the pay television system in Canada and allowed the applicants to determine what the policy for Canadian pay TV would be. The Commission was impressed by the presentations of First Choice and many of the regional applicants, so rather than deciding on who was best suited to offer pay services to

* Before the merger of Superchannel and First Choice, the Commission had already taken steps to adjust the competitive market structure of Canadian pay TV. It allowed the consolidation of TVEC, the Quebec French-language licensee, and First Choice/Premiere Choix to form a single French-language pay service called Super Ecran to be distributed across Canada. The inability of the Quebec market to support two general interest pay channels made the consolidation necessary. (CRTC, Jan. 1984: I-14) Also, the Canadian pay TV market became less competitive only a few months after it arrived, when the national special interest cultural service, C-Channel, went out of business due to the lack of a sufficient subscriber base. This development was rather predictable. The Commission's decision to make C-Channel a direct competitor with First Choice and the regional services with the same subscription fee per month practically ensured C-Channel's failure. A special interest service offering only eight hours a day of programming could not possibly attract a large enough subscriber base when it was competing against general interest services offering 24 hours a day of programming. If C-Channel had been offered as an additional service to go along with First Choice for a few dollars a month extra, it may have had a chance to survive, but the Commission's decision to make it a direct competitor to First Choice sealed its fate before it even started.

Canadians, it gave licences to all of them and then hoped there would be enough interest among Canadians in pay TV to support the national and the regional networks. The Commission's hopes were too optimistic and, as a result, a merger was necessary to allow Canadian pay TV to survive.

METHODS OF DELIVERING THE PAY SIGNAL

The third matter to be explored in this chapter concerns the method of delivering the pay signal to Canadians. Jeanne Sauve (1976: 7) originally expressed the desire to provide pay television service to all Canadians. However, in Decision 82-240 the Commission decided that pay TV, rather than being an over-the-air service, would only be available to Canadians owning a cable converter. This meant that a minority of Canadians would have access to pay TV, thereby contradicting the original goals of the federal government and the Commission.

The reasoning used by the Commission for this change in direction was their desire to make pay TV a discretionary service: one that would be carried at the discretion of the cable operator and received at the discretion of the viewer. If the service was carried on the basic

cable channels (2 through 13), it would not be discretionary. The cable operator would be forced to carry it and the cable subscriber would have to pay for it, unless he allowed one channel on his cable service to have a scrambled signal he could not watch. This scenario would have some discretionary elements to it, unlike the universal method of exhibition, but the decision of the cable subscriber would involve paying for the pay TV channel or else being deprived of one channel from his basic cable service, which he purchased on the understanding that he would be receiving no less than 12 channels. (Saunderson, 1985)

CABLE COMPANIES AS EXHIBITORS OR DISTRIBUTORS

There is also a question of whether the cable industry's role in the Canadian pay TV structure is that of being simply an exhibitor of the pay services, or of being a co-distributor. Although cable is distributing the pay service by carrying the signal, and is collecting a considerable amount of revenue for doing so, cable is really only an exhibitor. This is so because the cable companies are local operations. They do not constitute a network because they run their operations independently of each other and

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carry whichever conventional and pay channels they choose. The different cable operators do not have a single decision-making body to negotiate for them with the pay networks. (Saunderson, 1985)

A pay network buys and packages the programming for its service, then markets it and puts the signal on a satellite. At this point, the individual cable company decides whether or not it wants to exhibit the pay service in its particular market. It then signs an agreement with the network to exhibit the service and then decides on a price. An example of the lack of a unified policy among cable operators is that Winnipeg Videon offers First Choice/Super-channel, while Greater Winnipeg Cablevision does not. (Saunderson, 1985)

This lack of unity among the cable operators created difficulty for the pay networks when trying to market their services to potential customers. Many cable operators would criticize the networks' marketing strategy, but their opinions on how to improve it varied considerably. Cable operators wanted the networks to agree with them, but they offered 20 or 25 different approaches. First Choice could not even mount an advertising campaign in Toronto because the three cable companies in that city could not agree with each other. With so much disagreement among cable operat-

ors, the cable industry almost nullified the important role it could play in the Canadian pay TV industry. As it was, cable companies were simply a utility in 90% of the cases, when pay TV started in Canada. The pay networks tried to get the cable companies to take an active role in marketing pay TV, but the cable operators just sat back and waited for subscribers interested in buying pay TV to call them. (Cloutier, 1985)

PRELIMINARY TESTING OF PAY TV SERVICES

The fourth question examined in this chapter is why there were no pre-tests of experimental pay TV services in particular markets in Canada. The Commission (1978: 53) favoured the idea of conducting preliminary tests and many different interest groups also supported this notion. Global Television (1976: 22) suggested that it was mandatory that a pay service be subjected to an adequate period of test marketing before being introduced across Canada. The test should have been conducted in an area large enough to provide answers to many questions such as:

Should the signal be delivered over-the-air or by cable? Who will subscribe? Will the novelty result in an initial flurry of subscribers? How

How long before disillusionment sets in? How many will subsequently cancel? How many subscribers will continue? . . . What type of service is best? Will it be subscription or selection? . . . Must the programming be first-run movies? How much Canadian content will subscribers accept? What kind and of what quality? How much money would be available for Canadian production as a result of pay TV? What will the impact be on conventional broadcasting? What will the impact be on cable TV penetration? What will the impact be on the cost of programming in Canada? What will the impact be on the Canadian production community? What will the impact be on competing forms of mass entertainment and cultural events? How much should the viewer pay? . . . How much theft will occur of the service and the decoding devices? How will foreign film and program producers react? Will films be offered at bargain rates?

In addition, the testing area should embrace demographic conditions that are indicative of the country as a whole; an area that includes regions of high viewer choice, as well as rural areas where viewing choices are limited. The test period should be for two or three years -- long enough to demonstrate how such a system would actually perform if it were extended across the country. (Global, 1976: 23)

The Canadian Broadcasting League (Sept. 1976: 33) also suggested that there should be an experimental pay TV undertaking. They felt it should be tested in a medium-sized Canadian centre under licensing and regulatory conditions which would imply no long-term commitment to ownership and operation of the experimental system. As well, comprehensive and statistically reliable market surveys

would be conducted in concert with such pilot projects.

(CAC, 1976: 10)

The Private Television Broadcasters proposed the testing of the necessary equipment and the marketing potential for pay TV as a first step toward its implementation. The testing would also be done to evaluate the required technology and the public's acceptance of the programming.

(CAC, 1976: 16)

There were also groups which did not agree with the idea of single market testing to gauge the response to pay TV. The CCTA (1976: 17) believed such a test would be self-defeating. They felt that only the large-scale introduction of pay TV to the greatest number of potential subscribers would produce a sufficiently large base of revenues from which Canadian producers would be able to draw in order to create high quality Canadian programming for the service. They stated that the revenue available from a test market would not yield enough dollars to mount an adequate volume of Canadian programming of sufficient quality to test anything.

Of course, the CCTA had a vested interest in seeing a large-scale introduction of pay TV service because the CRTC would have to make a commitment to stay with pay TV as soon as it was introduced across Canada. This would mean

the cable operators could start collecting the revenue that would be coming to them from the pay networks which lease their cable channels. As well, the CCTA's argument about the inability of a single market licensee to produce adequate Canadian programming may be true, but it does not take account of all the finished Canadian productions "on the shelf" ready to be shown on the pay channel. The shelf product would meet the Canadian content needs of the channel for over a year until it had enough revenue to invest in new Canadian productions.

All in all, the CRTC probably did favour the notion of a test market for pay TV, but it wanted someone to put before it a direct workable application for a pre-test. The Commission was not going to conduct the test itself so it waited until some private or public group expressed an interest. As it was, nobody put forth an application. However, there may have been many applicants if the Commission had called for applications. Since it did not, one can assume that the Commission may have favoured pre-tests to a certain extent, but did not have a keen interest in them. It may have been worried about angering the conventional television stations in the market where the pre-test would be carried out. A local station would not want its viewership drawn away by a pay channel offering American "block-

busters". (Saunderson, 1984)

While the matters of preliminary testing of pay services and the method of delivering the pay signal to Canadian homes did not involve particularly controversial decisions, the CRTC's decision to license several pay services in competition with each other was a major error in judgement. The market quickly developed into two national networks in competition with each other for subscribers. But, the competition only confused potential subscribers because the two networks offered almost identical programming at an identical price. The CRTC had hoped that individual Canadians would subscribe to more than one service, but that hope was unrealistic because people were not going to subscribe to two services which they perceived to be the same. This sort of competition was definitely not the way to introduce Canadians to the pay-per-channel method of exhibition.

The CRTC was simply unable to reach a definite decision on pay TV, so it licensed both national and regional services and hoped for the best. The licensees were certainly not prepared for a competitive market because they had been led to believe that whichever applicant was successful, it would be operating in a monopoly situation.

Therefore, when competition was introduced, all the promises of performance made by the licensees in their applications should have been viewed in a new light. But, the CRTC decided to ask the licensees to live up to their promises anyway. This decision created difficulty from the beginning for the pay networks.

CHAPTER IV

CANADIAN PAY TV AND CANADIAN CONTENT

The previous chapter examined some of pay TV's structural problems which the CRTC had to deal with before allowing pay television to be introduced in Canada. This chapter will focus upon the programming to be offered on the Canadian pay services; most importantly, the quantity and quality of Canadian productions to be broadcast. The fundamental goal the CRTC has for pay TV is for it to help develop the Canadian production industry which will benefit Canadian culture and encourage a feeling of Canadian identity. The Commission stated this in its 1975 position paper when it said, "We are determined that pay-television shall develop to primarily benefit Canadian broadcasting, the programme production industry and Canadian creative talent."

(Boyle; 1976: 9) Furthermore, in her speech on June 2, 1976 the federal Minister of Communications, Jeanne Sauve, said she saw pay TV as a way to create wider viewing opportunities for Canadian programs and especially feature films. She said, "A structure will have to be devised that will maximize pay-TV's potential benefits for our broadcasting system and for viewer choice." (CRTC, 1978: 10) Harry Boyle, then Chairman of the CRTC, defined Sauve's goals as a "cultural security" for Canada using the technical system of pay TV as a cornerstone for the restructuring of the national broadcasting and cultural system. (CRTC, 1978: 12)

Boyle (1976: 9) said that pay TV must provide opportunities for Canadian creative talent, and that as pay TV increases in strength and resources there will be provision for a corresponding enhancement of Canadian program production. He described pay TV as "an important and serious first step towards the repossession of a Canadian broadcasting system."

At present, the entire system of Canadian broadcasting is in a state of crisis. In English-speaking Canada, only one of every three hours is spent viewing Canadian programs. This hour is primarily news and sports. Even more alarming is the research which indicates that by age

groups the least viewing of Canadian programming is done by young people. Edmunds (1976: 14) said that, "If television has the power to sell merchandise, it certainly has the power to sell an alien culture. The whole purpose of broadcasting in Canada has been undermined and the solutions are not easy." Canadian programming has not been able to compete on even terms with American imports to this country, so Canadians are being exposed more to American culture than Canadian and hence, our notion of a unique national identity is much weaker. To deal with this inequality, the Canadian Institute for Economic Policy said in its 1981 submission to the Federal Cultural Policy Review Committee that, "Canada has no alternative but to strengthen its domestic cultural industries . . . and . . . comprehensive and innovative policies for achieving these goals are urgently needed." (Audley, 1983: xxi)

THE DISADVANTAGE OF THE SMALL CANADIAN MARKET

A major problem that has to be overcome if the Canadian production industry is to be strengthened is the fact that the profitability of Canadian program productions is low compared with U.S. television production, and the risks

are infinitely higher. Market outlets in Canada are not prepared to cover a reasonable proportion of the production costs, while U.S. programmers generally receive 75% of programming costs from the American TV networks. Canadian producers only receive 30% coverage of costs. It is very difficult to make up the remaining 70% from sales to foreign markets, and for it to be possible, Canadian programs would have to be tailored to foreign tastes. (Audley, 1983: 228)

In order to remedy the problem of lack of profitability, the CRTC could have suggested to the federal government a plan to draw funds from all parts of the broadcasting and communications systems to supplement the expenditures that the pay networks supply for Canadian productions. (Silverman, 1976: 38) If taxes were levied on the cable TV industry, cable subscribers and conventional broadcasters, as well as on box office receipts of films, the federal government would have sufficient revenue to offer payments for each Canadian production equal to the payments made by the pay network. This pooling of resources would create revenues for Canadian productions great enough to produce quality Canadian programming to meet pay TV's content requirements. (Martin, 1976: 49) However, the CRTC made no such suggestion to the federal government and

the DOC did not pursue the issue either. Thus, with the entire Canadian production fund dependent upon a percentage of pay TV's profits, there will be a distinct lack of Canadian programming on pay TV for the first few years.

At best, pay TV will provide a supplementary revenue source for a few Canadian feature films produced each year, but it is questionable whether pay TV will cause the production of any films in the near future solely on the basis of its investments in the production fund. (CBI, Aug. 1976: 15) However, there is one way pay TV could help Canadian productions. It could use its buying power in foreign markets to help Canadian independent producers to seek commitments from major U.S. film studios to include a couple of Canadian films in their annual distribution allotment. This would help erase a substantial amount of Canada's programming trade deficit. (Lyman, 1983: 73) As well, a cultural investment review committee could be established by the federal government. It would encourage foreign communication companies to give international market access to Canadian productions, as well as guiding Canadian pay TV networks toward Canadian content and innovation. (Lyman, 1983: 161)

All that Canadian productions need to succeed is the money to finance them and access to markets in Canada

and abroad. An independent production study indicated that when independent Canadian producers are funded sufficiently well to meet reasonable production costs, their productions show good indications of international sales and profits.

(Edmunds, Strick, 1976: 15) If the federal government will not provide sufficient funds to produce high quality Canadian content and pay TV can only invest a limited amount of resources into Canadian productions, then success in foreign markets is crucial to recovering the investment needed to generate world-class programming in Canada. Fortunately, international trade in television programming is growing rapidly, so the export prospects for Canadian programming are improving. Proof of the international appeal of Canadian productions is provided by the recent success of Canadian feature films in the U.S. market, where box office receipts jumped from \$46 million in 1980-81 to a record \$200 million in 1981-82. (DOC, 1983: II-16)

However, if Canadian productions must appeal to foreign markets, particularly the U.S., to be financially viable, then the productions cannot be uniquely Canadian. If pay TV can help stimulate independent Canadian productions both by investment and by opening up some international markets this will be helpful, but the CRTC must use its regulatory power to attempt to satisfy the needs of the

Canadian production industry without selling out to the Americans. (Saunderson, 1984) The Commission (1976: 35) had cautioned that commercial success must not be achieved at the expense of important broadcasting policy principles relating to the predominance of Canadian programming required by section 3 (d) of the Broadcasting Act.

Thus, the choice to be made in the development of approaches to Canadian production involves consideration of the issue of "made-in-Canada" versus "Canadian" productions. The distinction between the two types is often ignored as

. . . the terms and concepts are all too easily telescoped into a single, fuzzy approach that covers a multitude of possibilities, and not all paths to support of Canadian production will necessarily contribute to the exploration and development of our own thematic mythology. (CBC, Sept. 1976: 32)

But, if the productions financed for the most part by pay TV revenues focus upon uniquely Canadian themes, they still will only represent a small portion of the programming schedule. The rest of the schedule will have to be made up of American and other foreign content. Therefore, pay TV will end up importing even more American culture into Canada, thus further imbalancing the overall system, and compounding the already formidable odds facing Canadian broadcasters in the competition for Canadian viewership. (CBC, 1976: III-1)

Canadian experience in the past has indicated that the addition of alternative television channels most often leads to a reduction in the viewing of Canadian programming. This trend applies not only to the introduction of U.S. channels via cable, but also to the licensing of third Canadian stations and networks. So why should we expect anything else of pay TV than a reduction in the viewing of Canadian programming? (CBC, 1976: III-4)

THE ABILITY OF CANADIAN PROGRAMMING
TO COMPETE WITH FOREIGN

For their money, Canadian pay-TV subscribers demand "blockbuster" entertainment, and the U.S. holds a near monopoly on that particular commodity. Even the high-quality Canadian productions will be overshadowed by the American entertainment. For that matter, the CCTA (1976: 7) stated their belief that customers will not buy a service based on a predominance of Canadian content, so cable will not market such a service.

There are many in Canada who believe that Canadians are inevitably going to share a common set of values, attitudes and perceptions with the Americans, so a notion such

as a predominantly Canadian broadcasting system for Canada as called for by the Broadcasting Act is irrelevant. But this attitude, in the final analysis, means giving up on Canada. (Johnson, 1976: 36)

Canadians consciously decided years ago that we wanted Canadian broadcasting, because we knew we wanted to remain Canadian. However, in recent years we have lost this feeling in the "jungle" of technology, step by step changes and imperfectly perceived trends. We must return to our original goal because it is better than a series of small and halting steps toward some unknown and uninspired goal. (Johnson, 1976: 37) There is still a recognition among the people of Canada that broadcasting represents a crucial vehicle for encouraging uniquely Canadian values. Canadians know that an absence of Canadian programming undermines our cultural awareness. "The government, in co-operation with the broadcasting industry, must ensure that our own programming and broadcasting capabilities . . . remain competitive." (DOC, 1983: II-5)

Most Canadians support the idea of Canadian content regulations. A 1980 Gallup poll indicated that 67.4% of Canadians favoured the CRTC's 50% Canadian television content policy. As well, a November 1980 CROP survey found that 63% of Canadians wanted some pay TV revenue used for

the production of Canadian programs. Only 27% disagreed. (Audley, 1983: xxv)

Therefore, it is utterly fundamental that when changes are proposed in the broadcasting system, every one of these changes must be evaluated in terms of its likely contribution to Canadian broadcasting, and its ability to achieve the objectives of the Broadcasting Act. (CBC, 1976: VI-3) The Act was a response to the chronic problem of too little Canadian programming with widespread appeal compared to foreign programming. (DCC, 1983: II-1) It was an effort to encourage the Canadian production industry through quotas backed by legislative directive.

Sauve (1976: 11) said pay TV must play its part to ensure the growth and development of the Canadian production industry and the broadcasting system. That system is underdeveloped in its capability for program production and as a creative outlet. Pay TV must be used to develop a truly Canadian production industry.

All independent producers need access to pay TV because the conventional broadcasters own their own production facilities, and control the means of distribution and the exhibition of programs. Therefore, they have no incentive to make use of independent productions. (Edmunds, 1976: 14) Edmunds (1976: 15) felt that,

What is lacking is a real sense of Canadian programs, and those who make them, being the dynamic heart of the system. It is simply perpetuating the delivery system in a medium where there should be very direct interaction between those who really buy the programs — the consumers, and those who make them — the producers.

The conventional structure of broadcasting has not proved adequate for the needs of the producing community. A study commissioned by the DOC described the Canadian content quota system of the past as being detrimental to the success of independent producers. The private broadcaster is required to produce Canadian content which has led to such investment in hardware and staff that virtually all production is done in-house. As a result of this situation, the independent producer becomes a competitor to the broadcaster. However, pay TV is a possible response to this problem because it brings new forces into play — new outlets, new sources of talent and new sources of payment for it. (CCTA, 1976: 6)

The ideas of tax incentives and direct funding from the federal government have not brought the Canadian production industry to its full potential, so the single remaining new source of funds is the public itself, through pay TV. (CCTA, 1976: 8) Although indirect funding from the federal government based on a taxation plan outlined earlier in the thesis, in addition to pay TV revenue would

create more Canadian productions, the revenue from pay TV by itself will be of some help to Canadian independent producers.

Pay TV represents a different economic base for the creation of programs than the more conventional advertiser-supported practice of private broadcasting. Edmunds and Strick (1976: 128) wrote,

Pay TV, if introduced into Canada carefully, could be highly advantageous to the independent production industry and could represent the kind of seed money which would permit the mounting of much more elaborate and marketable programs with an eye for foreign sales.

Unfortunately, pay TV was not "introduced into Canada carefully." The piecemeal nature of the CRTC's policy for pay TV, as well as the sudden introduction to Canadians of competing pay services, led to almost immediate difficulties which the pay networks and the CRTC have had to commit themselves to resolving. As a result, the creation of new opportunities for Canadian producers has received comparatively little consideration.

CANADIAN CONTENT REGULATIONS FOR PAY TV

The Commission (1973: 42) felt that more flexible

Canadian content rules giving higher credit for increased financial expenditures, a premium for the substantial use of Canadian talent, scheduling preference, etc., must be seriously considered for pay TV in order to encourage quality Canadian productions. The financial support for Canadian programs should be governed by commercial indices, and subsidies should not be considered. The imagination and enterprise displayed in Canadian productions should be the sole determinant of whether there is a significant return on capital invested. But, at the pay TV licensing hearings in 1981, representations from those involved in various aspects of program production submitted that the potential of the independent production industry has been underutilized. They told the Commission that it is imperative that producers remain independent of pay TV distribution networks, that access to Canadian and international markets be facilitated, and that producers receive financial support from the pay TV networks through the initiation, acquisition and subsequent exhibition of a significant amount of Canadian programming. They also proposed specific conditions to be imposed on licensees to ensure that pay TV makes a significant contribution to the development of the Canadian program production industry. (CRTC, 1982: 3)

To create a situation like this requires time and

money. There must first be funds to invest in Canadian productions which will appeal to viewers. Therefore, pay TV must first attract enough subscribers to acquire sufficient revenue to invest. According to the Canadian Association of Broadcasters (1960: 26) the immediate establishment of strict Canadian content quotas would work against this initial goal because not enough Canadians would want to subscribe to the service unless it offered the more popular American movies.

So, pay TV presents an interesting paradox. It must maximize its profits so that it can channel this revenue into the Canadian production industry. But for pay TV to maximize its profits, it must initially offer a great deal of American entertainment. (CBC, 1976: IV-2) After it becomes profitable, pay TV can start offering the new Canadian productions which its revenue has helped produce.

The Commission had this thought in mind when the 1981 licensing hearings began. They believed that Canadian content regulations should be approached as a gradual process. Quotas would be set at a realistic level corresponding to the capacity of the Canadian program production industry. Afterwards, the requirements would be reviewed frequently so as to raise them as soon as possible. Accordingly, when the Commission published Decision 62-240 the

regulations allowed the general interest licensees the flexibility of a 30% Canadian content goal, overall and in prime-time viewing hours, in the initial years of the licence, rising to a 50% minimum in the last 15 months of their five year term. As well, licensees were allowed to determine how great a portion of their gross revenues would be spent on the acquisition of Canadian productions each year, just as long as the final total meets the percentage specified for their licence term. (CRTC, 1982: 21)

In 1983, the CRTC decided that the Canadian programming content rules should be even more relaxed. Like the requirement for the investment of gross revenues, the proportion of Canadian programming on the networks' schedules would only have to average out to 30% over the first three years and nine months of the pay networks' licences rather than meeting the 30% standard for each year of the licence. But this decision was strongly protested to the federal cabinet via a formal petition by Canadian performing groups. The cabinet upheld the petition and asked the Commission to reconsider. Finally, the Commission decided to return to the original year-by-year calculations. (Saunderson, 1984)

The Canadian production community was very upset about the CRTC's relaxed content rules because they did not

want funding for Canadian productions delayed, since the pay networks could say in the fourth and fifth years of their licences that they still lacked the revenue to invest and, as a result, few Canadian programs would be produced. Therefore, the Commission could not back away from its original Canadian content rules since many people in the production industry would see this as another failure of the CRTC to encourage the production of Canadian programs. But, the Commission also had to be sure that the pay networks were profitable before they could be forced to invest in new Canadian productions. So, the compromise solution was to ask that the year-by-year requirements be adhered to, but not to the letter. (Saunderson, 1984)

At the beginning of 1984, the CRTC expressed optimism that the more flexible Canadian content requirements put in place for the remaining general interest licensees were being respected. The Commission claimed that the licensees did not believe the requirements to be onerous, and were generally meeting them without much difficulty. The Commission reported that considerable resources had been expended in developing new Canadian productions which have provided employment opportunities for Canadian writers, directors, producers, performers and technicians. In addition, firm financial commitments related to Canadian pro-

grams with a value in excess of \$100 million had been reported. (CRTC, Jan. 1984: I-13)

However, at the July 1984 public hearing, the licensees did not offer such an optimistic outlook. First Choice and Superchannel combined had expended only \$15 million worth of investment and commitments toward Canadian productions by that time. As well, the licensees were asking to have their Canadian programming content requirements reduced to 30% by the fifth year of their licences because they were having difficulty meeting the original specifications. (CRTC, July 1984: 268) Also, the cable operators wanted a relief for pay TV from Canadian content regulations. They had very little faith in the ability of Canadian content to sell pay TV. They thought Canadian programming in the prime viewing hours (7 p.m. to 11 p.m.) was reducing pay subscriber rates. (Cloutier, 1985)

The CRTC's (Aug. 1984: 13) response to this issue was to offer to re-examine the matter of the availability of suitable Canadian programs for pay TV, but the Canadian content requirements must remain the same to achieve the desired objectives of enhancing the quality and distinctiveness of Canadian programming and generating new opportunities and revenue sources for the Canadian program production industry. Therefore, Superchannel, for instance, would

still be held to its promise to devote 100% of its profits toward funding Canadian program production, to be apportioned among each of the regions according to the ratio of their subscribers in each area to the total number of subscribers. (CRTC, Aug. 1984: appendix A, iii)

Of course, the problem with this regulation is that the investment of 100% of the profits by a network that is losing money amounts to nothing. Canadian pay TV has to make a profit before it can be an effective aid to the Canadian production industry. In the meantime, the Canadian pay networks must rely on American feature films to attract enough subscribers to make their operations profitable before they can encourage Canadian productions. But when the Canadian productions start to account for 50% of the networks' programming schedule, they will have to be of a high quality, or else subscribers already accustomed to big-budget Hollywood movies will become discontented and possibly cancel their subscriptions. So the question remains: How can the limited revenues of even a successful Canadian pay network possibly encourage big-budget Canadian productions, unless the productions appeal to foreign markets due to their lack of a distinctly Canadian character?

The issue of Canadian content requirements for pay

TV is proving to be just as difficult for the CRTC to handle as the question of Canadian content on conventional TV. In Decision 82-240, the Commission said it would review the Canadian content requirements periodically with a view to strengthening them. Instead, the Commission has chosen to weaken them. The independent production community is very disturbed by this because they see it as another abdication of authority by the CRTC in terms of Canadian content on television.

The reason the Commission has had to allow the licensees to back away from their promises of encouraging Canadian productions is that the licensees are not generating the revenue they expected to be. Much of this problem can be traced back to the CRTC's decision to license competing services. The licensees did not take a competitive market into account when they calculated their potential profits. So the costs of competition and the confusion among potential subscribers caused by competition forced the licensees to ask the CRTC for concessions on Canadian content regulations. But now that direct competition has been eliminated and First Choice/Superchannel should become profitable, it is incumbent for the CRTC to insist that the licensees live up to their promises for Canadian content. However, one can only speculate whether the CRTC will do so.

CHAPTER V

CONCLUSION

CANADA'S PAY TV POLICY PROCESS COMPARED
TO THE POLICY PROCESS PARADIGM

There is plenty of room for criticism of the policy process for pay TV in Canada because the CRTC never developed a firm policy direction to allow for a careful and smooth introduction of pay TV to Canada. However, the difficulties the CRTC had in developing a policy are not surprising if one refers to the policy process paradigm in Chapter I of this thesis. Richardson (1969: 107) warned that effective policy-making action is very difficult if governments hand over what are essentially political problems to extra-governmental and extra-parliamentary bodies,

like the CRTC.

The public had very little input into the pay TV policy process because its representatives in the federal government were not particularly concerned with the issue of pay TV for Canada and left it for the CRTC to deal with. The federal government was prepared to accept whatever policy for pay TV that the Commission came up with. But even though the CRTC was appointed to serve the public interest, it is not an elected body so the public is not its natural constituency. In fact, the only natural constituency it has is the broadcasting industry. Therefore, it has to please the broadcasting industry because this is the group that had by far the most influence, and exerts the most pressure, on the Commission. So, since the decisions of the CRTC regarding pay television entailed very significant costs and benefits to groups such as the cable companies, broadcasters and independent producers, it was faced with a great deal of pressure from these groups and, unfortunately, could not find an adequate compromise to please the interest groups and serve the public interest.

Public pressure was never a factor in setting the policy agenda for pay TV in Canada. Canadians were generally satisfied with the television service available to them and were not very concerned with what pay TV could

offer. So the issue of pay TV for Canada was initiated by governmental authorities and powerful interest groups involved with the broadcasting industry. Therefore, it can be said that the pay TV policy process lacked legitimacy because it was deliberately generated as an issue to deal with for an agency with the responsibility of defending the interest of the Canadian public, even though there was not a widespread interest among Canadians in the issue. This lack of legitimacy is what may have hampered the ease and speed with which the rest of the policy process was carried out.

The CRTC never formulated a course of action for pay TV because it did not feel there was any hurry to introduce pay services, since most Canadians had little interest or knowledge about pay TV. Instead, it called several public hearings and appointed special committees to study the issue in order to give the groups interested in seeing the introduction of pay TV the impression that the CRTC was also interested. But the CRTC could not have been very interested in pay TV, because it did not set a clearly defined policy, even after all the input it received.

Right up until the 1981 licensing hearings, the Commission had not designed a policy which it was committed to. Rather than pursuing the rational method of decision-

making, where the decision-makers achieve rationality through a broad evaluation of all viable alternatives and their consequences so they can formulate a policy that is as unlikely to fail as possible; (Chandler, 1979: 123) the Commission followed the method of disjointed incrementalism. Its policy process was made up of a disjointed series of piecemeal decisions and did not take shape until after the Commission had heard the applications at the licensing hearings. Due to the Commission's indecision before the hearings, it was left in a position where it had to follow the applicants' promises instead of making the applicants follow its guidelines. Also, the Commission's decision to license competing services caught the applicants by surprise because it changed the nature of the pay TV market that they were expecting if they were licensed. So the Commission setting regulations in accordance with the applicants' promises but then turning things around by unexpectedly introducing competition in the marketplace, has resulted in the Commission having to continually adjust its policy for pay TV whenever changes are necessary to allow the pay services to survive.

PAY TV'S CHANCES OF COMMERCIAL AND
CULTURAL SUCCESS IN CANADA

The CRTC and the Canadian independent production community had very high hopes for pay TV in Canada. Producers felt that a great deal of new revenue from pay TV would be flowing into the production of Canadian films, while the CRTC saw pay TV as a good way to build a stronger, more distinct Canadian culture. Since the licensees were required to schedule a specified percentage of Canadian programming in the prime viewing hours, the Commission (1982: 13) felt that the quality of Canadian programming exhibited on the broadcasting system would improve. So with this improvement, the Canadian broadcasting system could finally come closer to meeting the objectives of section 3 (d) of the Broadcasting Act. This subsection stated that

the programming provided by the Canadian broadcasting system should be varied and comprehensive and should . . . be of a high standard using predominantly Canadian creative and other resources.

Although the CRTC never expected pay TV to create enough revenue by itself to fund the requisite level of quality Canadian productions, it was supposed to help the producers of new Canadian films get back the investment in their projects. Pay TV would be another market in Canada

for a producer to sell a production. With this extra revenue from a Canadian source, Canadian producers would be less dependent upon foreign funding which brings with it foreign control. (Saunderson, 1985)

However, pay TV has not had the market success that was anticipated for it by the CRTC and the pay licensees. During the 1981 application hearings, the future licensees projected subscription figures which were unreasonably high. The figures were high because they were based on the U.S. experience where pay TV subscriber rates were going through a pickup period at the time, after having pay TV services on the market for several years. (Cloutier, 1985)

The CRTC and the licensees made the mistake of believing that a product which Canadians were generally unfamiliar with could equal the rapid rate of growth of a U.S. service that was fairly well established and familiar to most Americans. They were also mistaken in believing that a competitive pay TV industry would succeed in Canada because it was successful in the U.S. Cable pay TV in the U.S. was introduced on a national basis by one network, HBO, which developed primary demand. HBO was followed by other networks which also developed primary but more selective demand. Then they became competitive. Canada, on the other hand, was introduced to competing pay networks all at

the same time. Such a sudden introduction is not an effective way to market a new product. (Cloutier, 1985)

Canadians did not understand the true nature of pay TV when it was introduced and could not be educated about it because the pay services were competing with each other. If one network was going to attract a subscriber to itself rather than the other network, it could not mention that it would repeat programs several times a week because it knew its competitor would not mention that either. Therefore, subscribers were very surprised and discontented to see the same program repeated so often. In its first few days of operation, First Choice, for instance, received many angry calls from subscribers about repeats. They thought pay TV was related to conventional TV. Others were upset that the movies shown on First Choice were a couple of years old. Those people thought that pay TV would show movies that were currently in the theatres. As a result of this confusion, there was a high incidence of subscribers asking to have their pay service disconnected. (Cloutier, 1985)

Another problem brought about by competition was that each pay network had to initially purchase "blockbuster" films to achieve an advantage over its competitor in the marketplace. They knew they could not continue to buy these high-priced films because they did not have the re-

sources, but they had to have them initially to gain a competitive edge. Since the pay networks offered the most popular films first, subscribers' expectations were raised to unrealistic levels. Therefore, when the blockbuster films became fewer and farther between on the pay channels, many subscribers chose to have their service disconnected. If a competitive market had not existed, First Choice would have begun by offering some good, fairly popular movies, before offering the blockbusters when it had revenue sufficient to do so. (Cloutier, 1985)

Pay TV in Canada could have been marketed in a much more effective manner if one national network had been sold, along with C-Channel as an extra service for no charge if the subscriber wanted it. Then the regional networks should have been brought in about a year later when pay TV was familiar to Canadians. If this process had been followed, subscribers would have been more satisfied with pay TV, the operating costs of the networks would have been substantially lower, and the quality of programming would still have been the same. However, as it was, the networks were out-bidding each other to buy the productions, the subscriber and the cable operator. (Cloutier, 1985)

The Canadian cable operator was in a much better negotiating position with the new pay networks than the

American cable operator was when pay cable began in the U.S. Cable TV was quite new in the U.S. when pay cable arrived. U.S. cities had plenty of channels available to the public without cable, so cable did not become popular until pay TV arrived at the same time as the superstations and specialty services. Since American cable operators were not established at that time, they did not have the leverage to charge the pay network a high price to carry its signal. But, Canadian cable companies had a solid financial base and were well established in the market, as well as being local monopolies. They knew that the pay networks needed them more than they needed pay. Therefore, they could charge the pay networks an inflated price to carry the signals. So the cable companies are making a great deal of money from pay TV while the pay networks will be fortunate to turn a small profit by their fifth year of operations. (Waddington, 1985)

The reason that profitable pay networks are desirable is the fact that a considerable percentage of their revenues must go toward investment in Canadian productions. But, if pay TV is going to earn the substantial profits that the CRTC envisioned it would, it will have to reduce its operating costs. One way to do this is for the federal government to regulate how much the pay networks are charged

by the cable operators to carry their signals. (Waddington: 1985) However, such an action is unlikely because of the spirit of deregulation which has been prominent in government circles the last few years. After all, it was the belief in deregulation which led the Commission to opt for a competitive pay industry with the marketplace regulating activity.

Another way that has been suggested to increase the revenues from pay TV to be funnelled into Canadian productions, is to allow commercials on First Choice/Superchannel. At the 1984 CRTC hearings on the merger of First Choice and Superchannel, the Ontario government cited a national opinion survey by Paul Audley and Associates which found that 52% of the respondents said they subscribed to pay TV for the movies, while only 26% alluded to the fact that it was commercial free. Also, when asked how the new specialty services should be paid for, only 7% of respondents said by subscriber fees alone, while 28% said through a combination of fees and advertising. Based on these findings, the Ontario government proposed advertising on all the pay services so that the monthly subscription fees would be reduced, thereby attracting more subscribers. (CRTC, July 1984: 202)

The logic of the Ontario government's proposal

seems somewhat weak. First of all, only 28% of respondents, far from a majority, suggested funding pay TV through a combination of subscriber fees and advertising. But more importantly, the respondents were saying whether they would accept advertising on the specialty services, not the movie channel. Yet, the Ontario government assumed that if subscribers will accept advertising during sports events and in between different music videos, they will accept commercial interruptions during films. Such an assumption is difficult to accept because a film is a much different viewing experience from the programming on the specialty services. A sports event, for instance, lends itself to commercial interruptions during its many stoppages in play, however, a film has an on-going development during its running time which means that commercial interruptions will disturb the process of that development. Saunderson (1985) said that a great attraction of pay TV was the absence of commercial breaks. The Commission received plenty of input from the public through interventions which made it clear that they did not want advertising during movies. As well, the cable industry does not think that commercials should be included, and the pay networks have indicated no interest in running commercials on their service. So, the Commission has not been persuaded that the benefits of advert-

ising revenue for First Choice/Superchannel would outweigh the marketing problems that the networks might encounter if commercial advertising was included. (Saunderson, 1985)

Without advertising on the movie channels, or government action to regulate what the cable companies charge the pay networks, it appears that the Canadian production industry will have to wait until the pay networks start to generate greater revenues before the funding needed to improve the quantity and quality of Canadian productions will become a reality. But at least now the costs of operation for the pay networks have been reduced by the merger and pay TV is more familiar to Canadians, so the pay TV industry in Canada will become more profitable. Cloutier (1985) described the merger of First Choice and Superchannel as "the best thing that happened to the industry. They would have killed each other. . . . We could not keep working like that. It was a real street fight."

Although the merger is a healthy development in the Canadian pay TV industry, it raises the question of whether the CRTC will have to issue stricter guidelines to regulate the pay networks now that competition in the marketplace has been reduced considerably. In Decision 82-240, the CRTC (1982: 18) stated,

Had the Commission decided to license a single en-

tity for the distribution of pay television programming, it is probable that an additional degree of regulatory supervision would have been required to ensure accountability and to achieve the Commission's goals.

Judging by this statement, the merger of First Choice and Superchannel should bring about a need for the CRTC to take a more active role in the pay TV industry. But, they do not see things that way. The Commission still feels there is competition in the Canadian pay TV industry because The Sports Network (TSN), MuchMusic (MM) and Super Ecran are all competitors to First Choice/Superchannel. With this competition, the marketplace will have a substantial role to play in pay TV's development in Canada. (Saunderson: 1985)

It appears that the Commission's ideology will not allow it to actively regulate the pay TV industry, whatever the circumstances. Super Ecran cannot be considered an actual competitor to First Choice/Superchannel. It is just the French language alternative made necessary by section 3 (e) of the Broadcasting Act which states, "all Canadians are entitled to broadcasting service in English and French as public funds become available." As for the sports and music specialty services, they are not competitors to the movie channel either. They appeal to a different market and are offered for less than half the price of First

Choice/Superchannel. As well, most cable services in Canada offer ESPN and CNN in a package with the movie channel for the \$15.95 per month charge that already existed for the movie channel by itself. This sort of package suggests that ESPN and CNN are an enticement for more people to subscribe to First Choice/Superchannel. If ESPN and CNN were competing with any networks, they are competing with the equivalent U.S. services for sports (ESPN) and music videos (MTV) that have had their signals pirated by Canadians with satellite dishes. (CRTC, July 1984: 252)

Section 3 (j) of the Broadcasting Act says that "the regulation and supervision of the Canadian broadcasting system should be flexible and readily adaptable to scientific and technical advances." However, with regard to pay TV the CRTC is avoiding the responsibility to regulate and supervise. It is instead following the lead of the American FCC which has lessened its regulatory role in the last few years to allow a more laissez-faire environment in the communications field. The CRTC is making the mistake of regarding Canada's cultural products as a business venture. Cultural expression is an integral part of Canadian society and should be regarded as a public resource, with the CRTC using its authority as a regulatory agency to defend that public interest.

Historically, broadcasting in Canada has had to deal with the conflict between the idea of a public interest and the desire for a successful business strategy. Pay TV is simply a new manifestation of this conflict. The Canadian system has always acknowledged the doctrines of public and private enterprise, but has never been able to adequately reconcile them. (CBI, Oct. 1976: 5) Canadian producers have had difficulty creating high-quality Canadian content, which attracts Canadian audiences, because the Canadian market is too small to generate the revenues necessary to cover the investment by the producer in the production. As well, broadcasters would rather not reduce their revenues to help Canadian producers fund their products. Instead, they import foreign content that is much less expensive to purchase, and in much greater supply, to fill their programming requirements.

Pay TV, however, was licensed in Canada on the understanding that it must contribute to the production of Canadian programs. But, if it is to do so it must be a financially profitable operation. This leads to the question of whether the profit motive of private interests can effectively work with a regulatory agency motivated by cultural aims? So far, it has not. The Commission has had to make many adjustments to its regulations governing pay

TV in order to allow the licensees to survive. As mentioned in the previous chapter, the CRTC has had to weaken its enforcement of Canadian content quotas because they were putting too much of a financial burden upon the pay services.

First Choice, for example, spent a lot of time and money promoting Canadian productions which they had purchased for their service, but the programs did not attract customers to purchase the service. Canadian programs which were heavily promoted by First Choice did not bring about an increase in the subscriber rate the way popular foreign programs would. (Cloutier, 1987) So at this point, the Commission has had to put aside its cultural aims to significantly increase Canadian content, in order to allow the pay networks an opportunity to become profitable. The networks will have to rely on American programming to increase their subscriber levels in the near future, so once American programming becomes the standard fare for the pay channels it will likely be difficult to encourage the networks to take a chance on programming Canadian productions, even if they are more plentiful in the future. If this is the case, pay TV will probably not provide the predominance of high standard Canadian content called for in section 3 (2) of the Broadcasting Act.

It is not just their rulings on Canadian content

that the Commission has had to back away from since pay TV was licensed. When the CRTC (Jan. 1984: VIII-1) first proposed fewer restrictions on the pay licensees, one of the revisions of the regulations would allow the licensees, or associated companies, to furnish on a commercial basis, facilities or technical personnel in respect of production or post-production of programs to be shown on their pay TV networks. This contradicted the original ruling that the pay networks would not be allowed to have any involvement in the production of programs for their services. Decision 82-240 (CRTC, 1982: 23) stated

that the disadvantages of in-house production or acquisition from related companies generally outweigh potential benefits. Accordingly the proposed regulations . . . generally preclude the general and specialty licensees from producing their own pay television programming or acquiring programming from related companies.

The revision of this rule was probably influenced greatly by the acquisition of the majority of shares in First Choice by the Bronfman family, who also control the Astral View Production Company.

The ruling of the Commission was supposed to only allow Astral View to rent its facilities to independent producers and help in financing and distribution of productions. Astral View was not to produce any film or video productions of its own that were to be licensed to First

Choice. As well, First Choice was instructed to give no preference to Astral-View over other producers and distributors when purchasing shelf product to offer on their network. However, according to Garth Drabinsky (CRTC, July 1984: 235) of the Cineplex Corporation, these conditions have been disregarded by First Choice.

The major problem with Canada's pay TV policy was the lack of attention given by the CRTC to developing guidelines for the industry before the 1981 licensing hearings. Although the Commission had access to a great deal of information on pay TV, it had not formulated a policy for the licence applicants to live up to. Instead, the licensees' ideas became the guidelines which the Commission followed when developing a policy after the fact.

The licensees were naturally very optimistic about pay TV's chances of success in Canada so they overestimated their abilities to achieve their desired goals. But the CRTC believed the licensees were presenting an accurate assessment of what could be accomplished in the Canadian pay TV industry, since it did not know much more than the licensees did about pay TV's potential success in Canada.

Since Canadian pay TV has not been so successful, many changes in the original policy have been necessary to

allow pay TV to survive in this country. But, that policy was heavily influenced by the licensees' recommendations at the licensing hearings, so if the Commission has to change the regulations for the sake of the licensees, it is really not a contradiction of its ideals. As stressed several times before in this thesis, pay TV must be a profitable operation if it is to contribute to an increase in the quantity and quality of Canadian productions. So if the Commission's prohibition against in-house production has to be relaxed in order to help First Choice continue operations, then such action can be considered acceptable. Now that First Choice has the considerable financial resources of the Bronfman family to back it up, and Superchannel is controlled by a financially sound individual in Dr. Allard, it seems that pay TV in Canada has a very good chance of surviving. The chances of survival are greater now that the costs of competition and the redundancy of programming caused by two movie channels have been eliminated.

The commercial success of pay TV in the future seems apparent, but whether or not it can fulfill the objectives of the Broadcasting Act is open to question. For instance, any judgement on how great a contribution pay TV will make toward increasing Canadian content on television will have to wait a few years. For the time being, pay TV offers

another market for Canadian productions to have access to so that more Canadians can see them and the producers can obtain a little more revenue to get back their investment. In this regard, pay TV offers only a small assistance to the Canadian production industry. Where it can be of the most benefit is by generating its own revenue and using its profits to invest in new Canadian productions. However, it remains to be seen whether pay TV can be profitable enough in Canada to create the revenue necessary to make significant investments in Canadian productions. The pay networks have to attract subscribers initially by relying on American feature films to become profitable enough to offer funds to encourage Canadian productions. But the Canadian productions that will hopefully account for a predominance of the pay programming schedule as called for in section 3 (d) of the Broadcasting Act, in the future, will have to be of a high quality in order to satisfy the pay subscribers already accustomed to big-budget Hollywood movies.

The difficulties the CRTC had in developing a policy for pay TV in Canada arise from the fact that the Commission is a non-governmental agency. Therefore, the public is not its natural constituency even though it is the public that it is appointed to serve. Actually, the only natural constituency the Commission has is the broad-

casting and cable industries. So these are the groups it has to please, since they have the most influence and exert the most pressure on the Commission.

Another problem with the pay TV policy process is that it lacked legitimacy. It was deliberately generated as an issue by governmental authorities and interest groups involved with the broadcasting industry to be dealt with by an agency responsible for defending the public interest, even though there was not a real interest among many Canadians in the issue. This lack of interest by the Canadian public is a likely reason why the CRTC never formulated a policy for pay TV. It did not feel any urgency to do so. But the pressure of the interest groups and the Federal government finally pushed the CRTC to license pay services after the 1981 public hearings, even though the Commission was not comfortable taking such a step.

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